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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 296

HUBERT C. REYNOLDS, suing on behalf of himself and others having common rights and interests,

Petitioner,

v.

BOARD OF PUBLIC INSTRUCTION FOR THE COUNTY OF DADE, STATE OF FLORIDA, and JAMES T. WILSON *Respondents*

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

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I.

The Opinion of the Court Below

The opinion of the Circuit Court of Appeals for the Fifth Circuit was rendered April 23, 1945 (pp. 426 to 434), and was reported as *Reynolds* v. *Board,* 148 Fed. 2d 754.

II.

Statement of Jurisdiction

A statement of the grounds on which the jurisdiction of this Court is invoked is contained in the Petition and in the interest of brevity, is adopted as a part of this brief.

III.

Statement of the Case

A statement of the case is contained in the Petition.

We deem it well, however, for the convenience of the Court to give this chronological sequence as disclosed by the record:

In the school year 1941-1942 there were 263 negro and 1200 odd white teachers and principals employed by the Board of Public Instruction of Dade County, the agency of the State of Florida for the administration of public free schools of that county. The negro teachers and principals were members of the "Dade County Negro Teachers' Association," an unincorporated organization.

For the school year 1941-1942 teachers and principals were being paid salaries provided for under a schedule which had been adopted on December 11, 1940 (Pet. Ex. 2). This schedule provided separate and different salaries; those for the whites being higher than those for negroes, color or race determining the differential.*

On November 4, 1941, the said Negro association presented to the said Board of Public Instruction a letter embodying a resolution which had been adopted by its members directing attention to the illegality of the practice of making race or color the sole basis of compensation. Accompanying this letter was a petition for equalization of salaries signed by all but one of its members (Pet. Exhibit 1 of June 23, 1943).

The day after the presentation of the said letter and petition the Board abolished the existing schedule and directed the defendant Wilson who, although not a member of the Board, is by law its secretary and executive

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* The exhibits referred to in this brief are the original exhibits forwarded to this Court by order of the District Court; they were a part of the record in the Circuit Court of Appeals and were returned to the District Court.

officer, to prepare a schedule by which teachers and principals in the said schools would be paid according to their individual worth.

Three weeks later, Nov. 26, 1941, the Superintendent presented to the Board (Pet. ex. 3) a schedule providing for classification and rating on certain subjects by a committee composed of himself, and members of his staff, stating that all contract teachers had already been rated under this schedule. White teachers only were under contract at that time (p. 336). This schedule proved "unworkable" (pp. 147, 172, 225, 282), and on April 29, 1942, the Board adopted a new schedule (Rec. p. 19) as an amendment.

All the schedules were prepared by the Superintendent and the administrative staff to which he referred as "my personnel" (p. 214). And he also named himself and this personnel as a rating committee to rate and classify the teaching personnel of the schools, all of them being former white classroom teachers of Dade County (pp. 216-220).

In the meantime, there being no substantial change in the lot of the colored teacher personnel under the November schedule, this action was begun on February 17, 1942, by petitioner, who was President of the Negro Association, on behalf of himself and others with common rights and interests. The defendants made a motion to dismiss the complaint and the white teachers moved for leave to intervene as defendants. Both these motions were dismissed by Honorable Louie Strum, District Judge, on March 26, 1942 (p. 416).

On May 12, 1942 the defendants filed an answer, of which the following is a brief summary:

It admitted most of the allegations of the complaint but (1) denied that the services performed by the negroes is essentially the same as that by the whites; (2) denied that they pursued the "custom, policy and usage" complained of solely because of race or color; (3) denied the jurisdiction of the Court under the Judi-

cial Code and (4) denied that this is a suit in equity arising under the Constitution and laws of the United States (pp. 7-17).

On Feb. 11, 1943, the defendant superintendent was examined by plaintiff's attorney in a deposition taken before a notary public (p. 243). This deposition was offered in evidence but was excluded upon objection of defendants that it had not been submitted to the witness for review and correction (p. 83). Six days after the taking of these depositions and more than nine months after the original answer had been filed in which the defendants had alleged that they had impartially and without discrimination, because of race or color, rated all teaching personnel, white as well as negro, the defendants filed seven additional defenses in which, briefly stated, they alleged that the difference in salary was occasioned by the economic conditions and needs of the two races (pp. 42-52). And, incidentally, by the law of supply and demand.

The case came on to trial on June 23, 1943, but was continued after five exhibits of the plaintiff had been admitted in evidence. (Pet. Exs. 1, 2, 3, 4 and 5 of June 23, 1943).

On Nov. 12, 1943, the defendant filed a list of all salaries paid to the teacher personnel under the protested and succeeding schedules. The trial was resumed on Dec. 6, 1943. Petitioner offered in evidence the said official list of salaries, it being admitted as Petitioner's Ex. No. 1 of Dec. 6, 1943. Petitioner then offered the depositions above referred to, which, after first being admitted, were rejected for the reasons stated (p. 83).

The plaintiff then rested.

IV.

Specifications of Errors

The Circuit Court of Appeals erred in the following respects:

In affirming the order of the District Court.

V.

Argument in Support of Petition

No question is presented of the jurisdiction of the Court, nor is there any question as to the right to the relief sought — declaratory judgment and injunction (p. 5).

Question Presented

But one question is presented: Does the record show that the defendants discriminated against the petitioner and those similarly situated, solely because of race or color?

This is not the first case of its kind to come before the Courts. In the case of *Vernon McDaniel, on behalf of himself and others similarly situated,* v. *The Board of Public Instruction for the County of Escambia, a body corporate, and A. S. Edwards, Supt.,* U. S. Dist. Ct. Northern District of Florida, which was not appealed and, so far as we can find, is unreported, Judge Augustine V. Long said:

> "7. All teachers and principals in Florida, including plaintiff and others similarly situated are required to hold teaching certificates in full force, in accordance with the Rules of Certification established by the State Board of Education (Florida Compiled General Laws, Section 630). Negro and white teachers and principals alike must meet the same requirements to receive teachers' certificates." And
>
> "This complaint is in most respects similar to the complaint filed in the case of *Alston* v. *School Board of the City of Norfolk,* and in passing upon a similar motion to dismiss, the Court of Appeals of the Fourth Circuit, speaking through Circuit Judge Parker, said:
>
> " 'That an unconstitutional discrimination is set forth in these paragraphs hardly admits of argu-

> ment. The allegation is that the State, in paying for public service of the same kind and character to men and women equally qualified according to standards which the State itself prescribes, arbitrarily pays less to negroes than to white persons. This is as clear a discrimination on the ground of race as could well be imagined and falls squarely within the inhibition of both the due process and equal protection clauses of the Fourteenth Amendment.' *Alston* v. *School Board of the City of Norfolk,* 112 Fed. 2d, 992, text 995."

A petition for writ of certiorari to review the Alston decision was denied by this Court (311 U. S. 693, 85 Law Ed. 448).

Again quoting Judge Long:

> "In this case there is no statutory schedule, but there is a salary schedule established by administrative ruling of an administrative agency of the state, and the prohibitions of the Fourteenth Amendment certainly apply to such agencies. 'The inhibitions contained in the Fourteenth Amendment means that no agency of the State nor of the officials or agents by whom its powers are exerted shall deny to any person the equal protection of the laws. Whoever by virtue of public position under a State Government deprives another of property, life or liberty without due process of law, or denies or takes away the equal protection of laws, violates the constitutional inhibition; and as he acts in the name and for the State and is clothed by the State's power, his act is that of the State.' *Ex parte Virginia,* 100 U. S. 339."

The District Judge held (pp. 404, 406) that a substantial differential in salaries paid to the blacks, as compared to those paid to the whites, existed at the time of trial, but he said that this difference "resulted from the exercise of judgment and discretion of the defendants as public officials in evaluating the worth and effectiveness of the respective groups."

Schedule One Thing, Its Application Another

Even were it admitted that on their face the new schedules provided for an impartial system of rating teacher personnel we insist that the results as shown by the tabulation of salaries (Pet. Ex. 1 of December 6, 1943) prepared and certified by the Superintendent himself, together with their own testimony as to the preparation of the schedules, personnel of the so-called rating committee, the manner of rating as well as the figures themselves, disclose the sole purpose of the defendants to reach the same discriminatory differential in salaries between the white and the negro as under the acknowledged unconstitutional schedule and that their every act from the day of the negro protest to the day of the trial revealed their purpose—under a series of subterfuges—to give a superficial appearance of obeying the constitutional inhibitions, while actually ignoring them; or, as this Court said in *Smith* v. *Texas,* 311 U. S. 128-132, 85 Law Ed. 84:

> "The fact that the written words of a State's laws hold out a promise that no such discrimination will be practiced is not enough. The Fourteenth Amendment requires that equal protection to all must be given—not promised."

That case concludes with this significant and apt statement:

> "If there has been discrimination, whether accomplished ingeniously or ingenuously, the conviction cannot stand."

There is a dearth of examples of discrimination of the kind involved here. However, the principles stated in the Smith case, *supra,* are controlling.

Method of Rating Unfair to Negroes

As a matter of fact the methods of rating which the so-called rating committee devised and used as described

in defendants' exhibit 13 entitled "Interpretations, etc., are not even fair to the colored teaching personnel on their face as were the laws of Texas as pointed out in *Smith* v. *Texas, supra.* In making up these items, to refer to but two of them, the rating committee included: "college" and "cultural background." With the knowledge which this committee had it must have been perfectly apparent to them that to include any such items as grounds for comparative rating would be to work automatically to the detriment of the negroes.

For instance, let us take the item of -"college." Throughout the record defendants' witnesses testified that the negro colleges in their opinion and belief were inferior to the colleges attended by the whites. Therefore, by including such an item they knew that the negro would be penalized a certain number of points. Furthermore, may we not ask since when did the college attended by an individual become a proper criterion for the measurement of his teacher worth and effectiveness, especially a teacher who has been good enough to be continuously employed for from 10 to 30 years (p. 153).

Cultural Background

Now let us take the item of "cultural background": These white members of the Rating Committee throughout the record show that they had full knowledge that a comparison of place and manner of living and all of the things which go to make up "cultural gackground" favor the whites. Therefore, by including such an item in the basis of comparison they automatically penalized the negro a certain number of points at the very outset.

Principals Took No Part in Rating

To us one of the greatest elements of proof of discrimination lies in this fact which seems to have escaped both the District Court and the Circuit Court of Appeals: defendants' witness Pearson testified (p. 144) with reference to plaintiff's Exhibit No. 4, that he was

on the Rating Committee and quoted from that exhibit in part as follows:

> "The rating of teachers shall be a subjective and an objective rating by *principals,* (our emphasis) Supervisor of Personnel, Director of Instruction, etc."

Both the November 26, 1941, schedule and its amendment of April 29, 1942, contained the provisions cited by Mr. Pearson that principals were to take part in the rating of teachers. But principals took no part. The Superintendent testified that they were not intended as members of the rating commmittee and to prove this, the defendant Board adopted a resolution on February 24, 1943, thirteen days after the deposition of the Superintendent had been taken before a notary, stating that as "some question has been raised as to the personnel committee and in order to clear up any confusion and to set forth fully the action of the Board at the time the schedule was adopted it is desirable that the Board ratify, approve and confirm the appointment of the rating committee and also approve the ratings given by the rating committee." And then proceeded to name them individually, omitting the principals. (Defendants' Ex. 4, page 145.) The sole purpose of this, of course, is apparent. The schedules had named the principals and these same people by their official titles. This committee under the direction of the Superintendent had totally ignored the principals. As a matter of fact, the Board played no part in the whole proceeding except to do whatever told by the Superintendent.

Rating Committee All White

And, as the record shows, the rating of teachers and principals, both white and colored, was done by an all-white committee: (incidentally all former white class room teachers in Dade County) omitting as members of the rating committee not only colored representatives but the very persons who in the nature of things are

best qualified to judge teacher worth and effectiveness, namely: the principals themselves. Of this the Superintendent testified * * * "I think it would be within the authority of the Superintendent to clarify an issue of that type and I certainly feel that it is not the principal's function to serve on a rating committee. They are interested only in their own individual faculties. They do not have the complete picture of your county unit as a whole. They are comparing teachers of the school with teachers in their own faculty units and not possibly teachers in other faculties. It was never the intention that a principal should be a member of the rating committee" (p. 247).

A simple comparison of the results obtained after the adoption of the several schedules by the Board shows that the same substantial differential as existed under the last amended schedule (July 21, 1943) existed under that of Dec. 11, 1940, in which, more frankly, the Board separated the blacks from the whites, by color, and made this the sole reason for the lesser pay.

In order to make proper comparisons it is necessary to set each of the salary lists as shown in the official tabulation against the others. The first table, Appendix II annexed to this brief contains the salaries payable under the three schedules for the school year 1941-42, namely, the protested schedule, the schedule of November 26, 1941, and the last one under the amended schedule of April 29, 1942. From this table we find as follows:

Schedule of Dec. 11, 1940

Whites, minimum, $1020, maximum, $1800; colored, minimum, $724, colored, maximum, $1060.

The application of the above schedule to white and colored produces this result:

One year white, $1020; 1 year colored, $724; a difference of $296 between whites and colored. Two year white, $1020, 2 year colored, $724, a difference of $296.

Three year white, $1080, 3 year colored, $732, a difference of $348. Four year white, $1140, 4 year colored, $732, a difference of $408.

And this comparison carried throughout produces the same general result, except that in the later years of service the differential becomes greater.

Schedule of November 26, 1941

In this schedule "white" and "colored" were omitted and a schedule with three general classifications set up: "Good," "Very Good" and "Excellent." The record shows that there were no "excellent" teachers. The salaries provided for under this schedule were:

1. Good ..... Minimum $ 720—Maximum $1260
2. Very Good..Minimum 1260—Maximum 1800

Here we see the purpose to keep the "color" schedule differentials, the minimum fixed at $720 allowing the defendants to continue the colored teachers at the minimum of $724 while at the same time continuing the whites at $1020. The Superintendent explained how this was done:

> "So we just took the two salary schedules and set them up" (p. 243).

What two salary schedules? Simple enough! The colored salary schedule and the white salary schedule as they are seen in the protested "color" schedule (Plff's Ex. 2, June 23, 1943).

The salaries resulting from this schedule were exactly the same as under the protested schedule except that eight of the colored teachers were given a raise of salary (p. 245).

Then came the amended schedule adopted April 29, 1942, 71 days after the action was begun. In this one they added the Supervisor of Negro Education to the rating committee, although he is shown by the rec-

ord to have taken a leading part in such deliberations as they are alleged to have had previously. Also they divided the "Good" classification by adding "Fair," thus making the classifications "Fair," "Good," "Very Good" and "Excellent." Again no excellent teachers were found in the system.

Schedule of April 29, 1942

Reference to the salaries paid under this amended schedule shows the following: 1 year white $1020, 1 year colored $724, difference $296. 2 year white $1020, 2 year colored $724, difference $296. 3 year white $1080, 3 year colored $780, difference $300; 4 year white $1140, 4 year colored $840.

Under this schedule for the first time they began to credit the colored teachers with the annual increment.

As in the figures under the previous schedules we are faced with practically the same differentials year in and year out, but increasing with the years.

These ratings are of 4 year college degree teachers. There were non-degree teachers treated in the same way as degree teachers. They held only Normal College degrees. Beginning teachers were treated differently (p. 300-301).

We believe, however, that for the purpose of this brief "the policy of discrimination" charged by the petitioner can be illustrated with less confusion by sticking to the lines of comparison we are using.

So far we have cited only figures of first few years service of the 1941-42 school year. The table, Appendix II, annexed to this brief contains the salaries of both white and colored for all years of service for comparison in parallel columns, we think deadly.

If the reason for adding the new classification "Fair" to the April 29, 1942, schedule be asked, we think it plain, for it afforded a simple method of blocking the negroes from the possibility of reaching a higher salary than

$1080 by annual automatic increase of $60 unless by favor of the rating committee.

$1080 is but $20 more than the highest salary they had thought a negro college degree teacher was worth under the "color" schedule protested.

With the minimum salary of $1020, by the addition of $60, one annual increment, the white teacher could now reach the limit salary of the "Fair" classification ready to be advanced to the "Good" class, while the negro, starting at $724, couldn't reach that limit for 7 years. And couldn't get past it without the favor of the rating committee, the whites automatically going over it, as the table shows.

Appendix II shows that the white teachers in 1941-42 under all the schedules were paid salaries depending solely on their years of service.

Appendix III contains a table showing the salaries of all the degree teachers, both white and colored, who remained in service for 1943-44 with their salaries for the years 1942-43 and 1943-44.

This table demonstrates that there was no intention at any time to classify the white teacher other than by years of service for in every year the salaries of all in that year are the same.

Of course there were a few colored teachers given higher salaries. The rating committee was smart enough to do this but not smart enough to see that figures themselves show that they were treating the negroes by an entirely different system.

It may be well here to note the method by which the so-called rating committee reached the results shown in the tables.

Mr. Conroy, Supervisor of Negro Education, and apparently the one who knew more about the system, if not of the 1200 or more white teachers, testified that at the time of completing the ratings for the 1941-42

school year they had no formal written definitions which would indicate the "qualities meant by the various things" and "the only material we had was a list of teachers in existence in the office" and that after his return from a meeting of the Southern States Work Conference "we studied that for some time and we then began to formulate and write out certain forms that could be used in the rating of each and every individual." The purpose of this, he said, was to keep their minds from wandering off the track, etc. (pp. 286-7).

The paper he referred to is entitled "Interpretation of the personnel rating committee report by the rating committee (Deft's Ex. 13; Rec. p. 287).

We think this paper so illustrative that we have reprinted it as Appendix I-C annexed to this brief. It contains some 2000 or more words.

Speaking later of the work of the committee, Mr. Conroy attached great importance to this paper when he testified that "fatigue," if nothing else would cause a man's mind to vary in going through a process over and over again but "if you have this thing lying on the table you will then have almost invariable thinking and it was a group, not one particular one, and those things stick in your mind" (p. 352). A little incoherent for an educator.

Mr. Conroy was asked on cross examination if he meant to tell the court that every time they rated a teacher, some 1200 or more, they had to have reference to the definitions in this exhibit and he replied:

> A. I do mean to tell the court that and we did it with good, sound reasoning (p. 351).

Some people might believe that, but we venture to say that a negro teacher would not swallow it, nor would he believe that his white colleagues would or could give him a square deal, especially when he was not present.

We may suppose that having gone through this fatiguing process with "this thing lying on the table" the

committee felt great satisfaction that the results justified their belief that the differential of the protested unconstitutional schedule did not discriminate against the negroes.

It is not in the cards that any group of whites could rate a negro the equal of a white on his cultural background, no matter how great his education, no matter how efficient, no matter how charming his personality.

The first ratings under the April 29, 1942, schedule were the basis of the plea in the Answer filed May 12, 1942, that all teachers had been rated under that schedule impartially and without discrimination on account of race or color.

It is undeniable, as demonstrated by the figures, frozen facts, that having amended the schedules four times, and after having—as they claimed—rated and graded *all* teachers after every amendment, the white teachers are all found in the same relative position to each other, that is, advanced regularly according to years of service, all in each year of service at the same salary, just as under the unconstitutional schedule protested, while the colored teachers were nailed down to the same minimum as before, a pitiful few receiving increase of salary under some fanciful notion that they were being treated impartially by a committee of former white teachers.

When we consider that the rating form contained 20 odd points for rating, such as: "personality," "sense of humor" (p. 161) (Deft's Ex. 5), and that these were used four times, we get the figure of 80 times 1250 (there being that many white teachers) or more than 100,000 items upon which the white teachers were said to have been rated—with not a single change in their grade or classification taking place, except their progress to higher salary by years of service and in each year at the same salary. Absolutely incredible! This one fact alone, we believe sufficient to show that the schedules were "ingeniously" prepared (*Smith* v. *Texas, supra*) to give the superficial appearance of obeying the constitutional

mandates while actually ignoring them. Certainly it is as indicative of purposeful discrimination and prejudice as this Court found existed in *Norris v. Alabama* (294 U. S. 587, 79 L. Ed. 1094). In that case the public officials stated that "No one was 'automatically or systematically' excluded, or excluded on account of race or color; that he 'did not inquire as to color'; that was not discussed," while in our case all of the defendants' witnesses made direct statements which showed that their minds were prejudiced against the petitioners on grounds of race and color. R. P. Terry (p. 128):

> "I would regard it as a very strong indication that that 1940 schedule (schedule of Dec. 11, 1940) did substantiate justice between the two groups * * *"

I. T. Pearson (p. 135) speaking also of the unconstitutional "color schedule" of Dec. 11, 1940:

> "In the matter of measuring them as a group I should consider it was as fair and equitable as it could be. As individuals, no."

D. J. Conroy, Jr., Supervisor of Negro Education, speaking about the same schedule (p. 307):

> "No, sir. I think that that schedule was non-discriminatory."

We maintain that these members of the Rating Committee showed by our quoted statements, of which those given are only examples (the record is full of them) that they approached their duties with the thought that the unconstitutional schedule was fair and equitable; that the large differential in salaries, therefore, was fair and equitable and as it should be. To us it is ridiculous to think that out of such fixed opinions anything but discrimination could result. In the Norris case, *supra,* this Court said:

> "If, in the presence of such testimony as defendant adduced, the mere general assertions by officials of their performance of duty were to be accepted as an adequate justification for the complete exclusion of negroes from jury service, the constitutional pro-

vision—adopted with special reference to their protection — would be but a vain and illusory requirement."

We say that in the face of the showing that the comparative standing or the rating or grading of a single white teacher was not changed after all the alleged rating operations, the Courts below indulged in the "violent presumption" referred to in *Neal v. Delaware,* (103 U. S. 370, 26 Law Ed. 567). This was quoted in the Norris case, *supra,* by the Supreme Court in arriving at its conclusion that there had been discrimination.

In addition to the foregoing the record is full of inconsistencies and contradictions which should have shown to the Courts below "the way the wind blew" on this question of discrimination. The record is full of co-incidences which are simply too apt to have been the result of mere chance and which should have convinced the Court that the defendants were simply going through the motions of rating and grading to give a superficial appearance of compliance with constitutional mandates, while actually meaning to — and actually defeating them. All of these the Court either disregarded or simply overlooked. "The meaning of general attitude" spoken of by this Court in the Norris case seemed to have been entirely lost to them in arriving at their decision. We cite a few:

The *"Florida School Code," Chap.* 19355 (No. 360), *Acts of Florida,* 1939, Sec. 433, Sub-sec. 7 (f), imposed upon the Superintendent of Public Instruction the duty of preparing and recommending to the Board for adoption salary schedules furnishing incentive for improvement and efficient service. Yet nothing was done about it until Dec. 11, 1940 — that is the third month of the second year after the enactment of Florida School Code, when they adopted the "black and white" schedule, differentiating between the groups by race and color.

The Alston case, *supra,* was decided June 18, 1940. In March of 1941, Mr. Terry, a member of the defendant

Board went to a meeting at Tampa and undertook — of all things — a study of Public Instruction of the State of Virginia" (p. 113). When Mr. Terry spoke to these educators from Virginia, after the Alston case had decided that a schedule such as was then in use in the Dade County schools was unconstitutional, should we assume that his idea was to better the condition of the negroes? If we do assume this we would be dead wrong because the status of the negroes was never changed — they remained comparably in the same unfortunate situation as they were before. We say that the only proper assumption is that their idea was to perpetuate the then existing salary differential and yet appear to obey the constitutional mandates.

All of these witnesses, on direct examination, were glib and positive. Speaking of the important Rating Committee Mr. Terry stated that it was made up of (p. 126): Superintendent Wilson, Dr. I. T. Pearson, Dan J. Conroy, *myself* (our emphasis), Miss Kahl — while the record shows that the first rating (p. 144) was to be done by "Principals, Supervisor of Personnel, Director of Instruction, Assistant Director of Instruction and Superintendent." In the schedule there was no mention of any member of the Board — Terry or anyone else. Again (pp. 145-146) on February 24, 1943, after the case was in being for a year, the Board passed the resolution before referred to stating the names of the members of the Rating Committee and disavowing that it had ever been intended that principals should take part in the rating. (Defts. Ex. 4.) Could this disavowal have been because they were unable to show that principals had ever participated in ratings under that schedule. We say that the answer obviously is, yes.

On page 121, speaking of the abolishing of the color schedule of Dec. 11, 1940, Mr. Terry was asked if official action had been taken on it before Nov. 5, 1941., (the day after petitioners protested). Here is what he said:

"No, I don't think it was actually abolished then. The words were used, but it said it is to be abolished but it is continued in force. We went along there to please them by agreeing with them. (Our emphasis.)

Speaking about the resolution of Sept. 5, 1941, (Deft's Ex. No. 2) Mr. Terry was queried as to whether he knew that the Superintendent had applied certain tests directed to be given under that resolution:

A. You are talking about such tests as the Morrison Rating Scale?

Q. I don't know.

A. I don't think you do.

Q. I want to know what kind of test you expected to be applied under this resolution?

A. What we had in mind at that time was a test that is prepared by the National Education Association, which is a very comprehensive affair, *and I am quite certain that that was not followed.*

I think ....no written tests or so-called standardization tests were ever given pursuant to that resolution" (pp. 127-128).

We call attention to the statement of the Circuit Court of Appeals (p. 431) where it said:

"Under it the testimony is that the same tests, in the same room and at the same time were given the new teachers, both white and colored; and the old teachers were tested alike from time to time, until all were classified."

That is an inaccurate statement — there is nothing in the record to justify it. As a matter of fact it is contrary to the record. Terry, *supra,* and Pearson (p. 137).

"I have consistently given them to *beginning teachers* (our emphasis) since that time." "There were 47 teachers in this group — 30 white teachers and 17 negro teachers — "

Again to the same effect (pp. 139-140):

"Most of them were teachers without experience; some of them had taught one year."

The tests referred to by Mr. Pearson plainly had for their purpose confirmation of his opinion that as a group white were superior, there were no general tests of all teachers.

And then we have (p. 203) Pearson's statement that all rating and the establishing of qualifications were fixed by the Rating Committee and not by tests. According to Mr. Pearson a mere talk with a teacher in her class room would be sufficient on which to raise her salary.

Again, Supt. Wilson, speaking on pages 241, 242 and 243 seems to think that at one time they had given a test to all of the teachers. He was very indefinite and finally stated that he did not give the tests himself and was asked if there was a record of those tests and he thought there was. He was then asked to produce them. They were never produced. But on page 253 Mr. Wilson, on cross examination, said:

"With the exception of beginning teachers. We decided that it would be of benefit to give beginning teachers a standardized test along with other ratings."

"It was not deemed necessary to give experienced teachers that standardized test because we had records from other school systems and other objective information there that we could refer to and base a separate rating upon."

They even kept the teachers separate by color, as witness Wilson, page 224:

"Yes; we had a list of teachers, colored and white."

And it will observed that in the official tabulation whites and colored are in separate lists.

Superintendent of Schools, Wilson again on page 253, inadvertently no doubt, disclosed the real *modus operandi* of the defendants when, speaking of white teachers, he made this statement:

"I don't remember the exact ratings of individual teachers there. *I just recall we rated them as a group.*"

There, may it please the Court, from the mouth of the Superintendent himself — one of the defendants — comes the truth. He was speaking of the work of the Rating Committee which was to be done and was claimed to have been done, by individual rating. Now we have him admitting that they were not rated individually but were rated "as a group."

As an example of different methods of treatment as between white and colored throughout, we have the admission by Dan J. Conroy, Supervisor of Negro Education, that contracts were issued to the white people (p. 336) for the sake of the morale of the school system." But that contracts were not deemed necessary to be given to the colored teachers. The Florida School Code, *supra,* Section 423 (7) (g) made it obligatory to give contracts to all members of the instructional staff and forbade payment of any salary except when this provision had been observed.

The Circuit Court of Appeals (pp. 432-433) said:

"We are much impressed by a fact he (the district judge) did not mention. The amended salary schedule contains this provision: 'If any employee be dissatisfied with the rating received, an appeal may be made to the Board and the Board shall promptly

make available, at no expense to such employee, an examination under the supervision of the National Committee on Teacher Examinations. The result of the findings of the National Committee on Teacher Examinations shall be final and the said employee shall be increased or decreased in salary in accordance with such finding.' Not a single appeal to this disinterested arbiter has been taken."

We are amazed that this proposition of individuals being examined under the supervision of the National Committee on Teachers Examinations was given any weight by the Circuit Court of Appeals. There is no showing that this examination would be composed of the same requirements as was contained in the several schedules — the inference, from the record, is that it would not have been the same. Therefore the result of any such examination could not have been to rate or grade the teachers taking the examination upon the basis of possessing the same qualifications as was applied to all other teachers. By their actions, the Board put any teacher in the position of having to undergo trouble and study, to say nothing of loss of time, of taking any such examination because of their treatment of him; that, to us, alone, would constitute discrimination.

The Superintendent gave as the reason the principals should not serve on the rating committee that they would only be comparing teachers of their own faculty not having the complete picture of the county unit as a whole (p. 247). Could the National Education Association do better? How could an individual salary be fixed by an examination when salaries were all based on classifications in which all teachers of the whole Dade system were supposed to be rated comparatively?

We are very much concerned with the emphasized portion of the following extract from the opinion of the Circuit Court of Appeals:

"We much doubt whether a concrete, actual controversy is shown within the meaning of the dec-

laratory judgment statute, 28 U.S.C.A. 400; *or that any specific conduct is pointed out that could be enjoined.*"

That is, indeed, a strange observation. The allegation was that discrimination, because of race or color, was being practiced against the negro and the prayer was that that practice be enjoined. From the emphasized portion of the above quotation it would seem that the Court of Appeals might be in some doubt as to the force and efficiency of an injunctive order of a Federal Court, ordering the defendants to discontinue a custom, policy or usage of such discrimination. If the Circuit Court of Appeals is right and the entry of such an order would be of no effect—we, probably better "give the country back to the Indians." However, we have no doubts on such a score. If a Federal Court will enter an injunctive order, in broad general terms, enjoining and restraining the defendants from continuing a custom of discrimination against these petitioners we have no doubt whatever but that they will fall into line and comply with the order.

The Additional Defenses

Now a word concerning the "Additional Defenses" which were filed February 17, 1943, nearly a year after the defendants had solemnly declared in their answer, filed May 12, 1942, that it was their determined purpose to fairly rate all teachers and principals and fix their salaries on the basis of services and duties performed as well as their respective abilities and qualifications, and that in pursuance of that purpose they had adopted an amended schedule under which rating had been completed and that remuneration now paid and to be paid to teachers and principals is determined without discrimination as to race or color (pp. 15-16).

In these additional defenses, notwithstanding their protestations of impartiality and fairness in their answer, the defendants allege, that is, concede that the

whites are being paid more money than the blacks, giving as the reasons such economic factors as the greater cost to them of their education, greater cost of living and the law of supply and demand (pp. 42-52).

Almost as amazing to us as their suggestion in reference to the appeal provision of the schedule is the comment on these additional defenses by the Circuit Court of Appeals in which the court seems to attach no importance to these additional defenses.

The Circuit Court of Appeals says:

> "These defenses were not tried out. No evidence was offered to support them. The evidence is that no defenses were in fact made for any such reason; and that indeed there was an oversupply of white teachers."

It is true that the Superintendent testified that there was an oversupply of white teachers due to the delightful climate of Miami (pp. 207-209) but he could not tell of a single white teacher who had come to him seeking employment for any such reason (p. 273). Yet, in the face of the failure to prove this great supply of white teachers and the "additional defense" to the contrary, the Circuit Court in its opinion says: "Miami was overflooded with high grade white teachers attracted there by the climate."

That additional defense was that there was a dearth of competent white teachers and an oversupply of Negro teachers, and that the law of supply and demand, not discrimination as to race or color, resulted in the lower salaries to the negroes (p. 45).

What shall be said of litigants who plead one thing and endeavor to prove the opposite? Wherein lies the truth or good faith?

We are familiar with the rule that inconsistent defenses may be pleaded and that the pleader need not avail himself of, nor attempt to prove, any of such de-

fenses but may prove only those upon which he intends to rely. That is not the point; that is where the Circuit Court of Appeals—and the District Court—failed to use the usual common sense which all of us try to use in determining what lies within the brain of a witness—what prejudice, bias, or discriminatory thoughts are passing through his mind. These additional defenses plainly indicate to us that even before rating the defendants intended to have the result of that rating show a substantial differential in salaries in favor of the whites. We say, what sense would there be in working out complicated schedules and systems of ratings when uppermost in the minds of the defendants was the thought that the whites must be paid more than the blacks because it cost the whites more to live and because they had more invested in their education than did the blacks. It's true that no evidence was offered by the defendants to prove these things but the fact remains that despite the claim that they spent numerous hours "evolving" systems of grading and rating and after they were set up, of applying them. That the sole—or at least the paramount—thought in their minds was: the whites must be paid substantially more than the blacks. And, we insist that all of the "tireless work" done by these defendants was not to arrive at a fair, just, equitable and non-discriminatory method of rating of the teachers and principals, but to work out a scheme by which the same results in salary differential would be arrived at as existed when the unconstitutional "color schedule" was invalidated by the decision in the Alston case, *supra*. And that is exactly what happened.

We maintain that the record shows that at the time of the protest by the Colored Teachers Association on November 4, 1941, the defendants were pursuing a custom, policy and usage of discriminating as against the blacks and in favor of the whites, contrary to the Fourteenth Amendment; that after the last schedule amendment—

right up to the time of the trial itself—they were still pursuing the same course; that the result of their "painstaking efforts" was the perpetuation of the unconstitutional discrimination existing at the time of the protest. We submit that the District Court and the Circuit Court of Appeals both erred and that the decision of the Circuit Court of Appeals should be reversed.

Respectfully submitted,

ALONZO WILDER

CHARLES H. HYDE

EDWARD L. SEMPLE

Attorneys for Petitioner.

APPENDIX I A

DEFENDANT'S EXHIBIT 5

PERSONNEL RATING COMMITTEE REPORT

Name_____ Date_____

School_____ Assignment_____

	Fair	Good	Very Good	Excellent
I. EDUCATIONAL ATTAINMENT	1	2	3	4
A. College				
B. Professional Study	1	2	3	4
C. Thoroughness of Scholarship as evidenced by:				
1. Command and use of English	1	2	3	4
2. Letters, reports, and other written material	1	2	3	4

Grading Scale

3-6 Fair 11-14 Very Good
7-10 Good 15-16 Excellent

TOTAL _____

SECTION RATING _____

II. EXPERIENCE				
A. Record in Dade County				
1. Relationship with delegated authorities	1	2	3	4
2. Relationship to community	1	2	3	4
3. Relationship with other teachers	1	2	3	4
B. Record in other school systems	1	2	3	4
C. Experience in other fields	1	2	3	4

Grading Scale

3-7 Fair 13-18 Very Good
8-12 Good 19-20 Excellent

TOTAL _____

SECTION RATING _____

III. CULTURAL BACKGROUND				
A. Moral integrity as evidenced by:				
1. School relationships	2	4	6	8
2. Community relationships	2	4	6	8
B. Social responsibility as evidenced by:				
1. Participation in the development of teaching profession	2	4	6	8
2. Participating in community development	2	4	6	8
C. Personal development as evidenced by:				
1. Poise	1	2	3	4
2. Dress	1	2	3	4
3. Voice	1	2	3	4
4. Courtesy	1	2	3	4

III. CULTURAL BACKGROUND

A. Moral integrity as evidenced by:				
1. School relationships	2	4	6	8
2. Community relationships	2	4	6	8
B. Social responsibility as evidenced by:				
1. Participation in the development of teaching profession	2	4	6	8
2. Participating in community development	2	4	6	8
C. Personal development as evidenced by:				
1. Poise	1	2	3	4
2. Dress	1	2	3	4
3. Voice	1	2	3	4
4. Courtesy	1	2	3	4

Grading Scale

7-18 Fair 31-44 Very Good
19-30 Good 44-48 Excellent

TOTAL
SECTION RATING

IV. EFFECTIVENESS OF TEACHING

A. Rating by principal	1	2	3	4
B. Total evaluation of rating by committee	2	4	6	8

Grading Scale

3-5 Fair 9-11 Very Good
6-8 Good 12 Excellent

TOTAL
SECTION RATING

FINAL RATING OF COMMITTEE

I. Educational Attainment	1	2	3	4
II. Experience	1	2	3	4
III. Cultural Background	1	2	3	4
IV. Effectiveness of Teaching	2	4	6	8

Grading Scale

5-8 Fair 14-19 Very Good
9-13 Good 20 Excellent

TOTAL
FINAL RATING

Remarks from Committee: _____

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COMMITTEE SIGNATURES:

_____ _____

_____ _____

_____ _____

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APPENDIX I B

DEFENDANT'S EXHIBIT 12

PRINCIPAL'S REPORT OF TEACHER'S EFFICIENCY

Teacher's Name_____ _____ School

For Semester Ending_____ 19____

Total Number Years Teacher has served in Dade County Schools_____

From the very nature of employment, differences in training, personality, experience, and assigned duties, some teachers require much more assistance than others. All supervision should have the definite purpose of being helpful. Therefore, it should be friendly, sympathetic, and co-operative. *The purpose of this report is to preserve a record of the principal's supervision, as to its actuality, as well as to its results.* It is therefore expected that the principal will give frequent and thoughtful supervision to those who particularly need it. This is to be done, even if the more experienced teachers receive little or no specific supervision. It is the record of such efforts to help that is especially desired. Forgetting all previous ratings, please use as far as possible the practical application of the Normal Distribution Curve of five points as follows: Poor - 7%; Fair - 24%; Good - 38%; Very Good - 24%; Superior - 7%. Bear in mind, also, that teachers improve; otherwise, why pay for experience and training?

Dates and Duration of Class Inspection:

_____ _____

_____ _____

_____ _____

Copy delivered to teacher (only if rating is below Good)

Date_____ Signed_____ Principal

DETAILED RATING OF TEACHER

	POOR	FAIR	GOOD	VERY GOOD	SUPERIOR
1. General Appearance					
2. Health					
3. Voice					
4. Resourcefulness and Initiative					
5. Enthusiasm and Cheerfulness					
6. Tact					
7. Industry					
8. Promptness					
9. Daily Preparation					
10. Scholarship					
11. Professional Interest and Growth					
12. Ability to Help the Problem Child					
13. Interest in the School as a While					
14. Neatness of Room					
15. Cooperation and Loyalty					
16. Discipline					
17. Influence with Pupils					
18. Attentiveness and Interest of Class					
19. Ability to Inspire Pupils					
20. Attention to Individual Needs					
21. Ability to Develop Social Responsibility					
22. Gen. Usefulness in County School System					

APPENDIX I C

A. Defendant's Exhibit 5.
B. Defendant's Exhibit 12.
C. Interpretation by Personal Rating Committee.

DEFENDANT'S EXHIBIT NO. 13
INTERPRETATION OF THE PERSONNEL RATING COMMITTEE REPORT BY THE RATING COMMITTEE

I. EDUCATIONAL ATTAINMENT

A. College. In rating the college approximately one-half dozen outstanding colleges in the field of teacher-training were selected as a standard for the rating of "Excellent." These colleges were as follows:

Duke University, Columbia, Peabody, Colorado, Michigan and Chicago.

Approximately one-half dozen colleges of not such a national reputation as the above, but with outstanding equipment for teacher-training, were selected as a standard for the rating of "Very Good" colleges. These colleges were as follows:

Florida State College for Women, Tuskegee, Hampton, University of Miami, Southern, University of Florida.

Approximately one-half dozen colleges which were accredited by various regional accreditation agencies but not as well equipped for teacher-training as the above group were selected as a standard for a "Good" college. These colleges were as follows:

Florida A. & M., Stetson, Rollins and Clark.

All colleges which are not accredited by a national accreditation agency were rated as "Fair."

B. Professional Study. Professional study was interpreted to mean attendance at summer school, education, travel, participation in a work shop, or in extension or correspondence work from recognized colleges.

The divisions of fair, good, very good and excellent were based on the frequency of above professional study and the amount of credit earned.

C. Thoroughness of scholarship as evidenced by:

1. Command and use of English, was interpreted to mean the ability of the teacher to talk on the level of the audience, to express ideas and thoughts effectively, possession of a broad vocabulary

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2. Letters, re
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II. EXPERIENCE

A. Record in D

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broad vocabulary and knowledge in general as applied in the classroom and everyday conversation.

2. Letters, reports, and other written material, was interpreted to mean accuracy of reports, ability to compose a good letter, neatness and correctness of written material on file in the administration offices and as exhibited in the classrooms.

In the divisions of fair, good, very good and excellent of scholarship, a good rating was given on the average teacher's command and use of good English, and the ability to complete reports and other written material. A very good rating was given to the superior teacher's ability in these fields, and an excellent rating was given to the teacher of unusual ability, while a fair rating was given to the teacher below average.

II. EXPERIENCE

A. Record in Dade County:

1. Relationship with delegated authorities was interpreted to mean relationship between teacher and principal, or relationship between dean and head of department, or relationship between teacher and advisor, or relationship between teacher and superintendent or between teacher and trustees, or relationship between teacher and Board members. The teacher whose relationship with delegated authorities were in most respects above the normal were given a rating of good. One who was not only willing to respond to authority but also went out of their way to cooperate with the supervisors were given a rating of very good and an excellent rating was given to those who were outstanding in this respect. A fair rating was given to those who did not carry out instructions or who resented authority.

2. Relationship to the Community was interpreted to mean the attitude of the teacher to community interests, participation in P.T.A. work, friendly relationship with patrons, visiting the homes of their children and relationship with their neighbors.

The divisions of fair, good, very good and excellent were arrived at by assigning a good rating to the average or normal teacher; a very good rating to the teacher who actively participated in these activities; an excellent rating to the outstanding or unusual accomplishments in this respect, while a fair rating was given to the teacher who took very little if any part in any of these activities.

3. Relationship with other teachers was interpreted to mean an ethical attitude toward other members of the profession getting along with their fellow teachers, cooperating with their fellow workers in school activities and the degree of respect given teachers by other teachers.

The division of fair, good, very good and excellent were arrived at by rating a normal teacher as good. A teacher who was liked by fellow workers and cooperated in all school activities was rated as very good, while a teacher who was highly respected, very active in all school activities and exerted a marked degree of leadership in the school faculty was given a rating of excellent, while a teacher below the normal relationship was given a rating of fair.

B. Record in other school systems was interpreted to mean the recommendations received from former employers and the reputation of the school system.

The divisions of fair, good and excellent were arrived at by giving a rating of good to the teachers with experience in an average school system, who received good recommendations from their employers. Very good rating was given to the teacher who received a superior recommendation and came from an outstanding school system within recent years. While an excellent rating was given to the teacher with excellent recommendations from a superior school system of more or less national reputation and who held a position of prominence in this school organization. The fair rating was given if the teacher had had experience in a very small school organization of minor importance, but with satisfactory recommendations from her employer. If a teacher did not have any experience in other school systems than Dade County he or she was given no rating on this item. In as much as tenure of office of white teachers far exceeds that of the colored teachers, this if anything militated against the white teachers.

C. Experience in other fields was interpreted to mean the doing of work in other fields that would improve the individual teacher's ability, such as working in a book store during summer vacations, counselor in camp, doing recreation work, etc.

The divisions of fair, good, very good and excellent were arrived at by rating the teachers on the amount and kind of work done. If a teacher had no experience in other fields, he or she was given no rating in this item.

III. CULTURAL BACKGROUND

A. Moral integrity as evidenced by:

1. School relationships was interpreted to mean the honesty of a teacher in handling all school materials which include money, supplies, books, care of school property and so forth, and the character of the teacher in dealing with the school officials, other teachers and patrons.

The classifications of fair, good, very good and excellent were arrived at by giving the rating of good to every teacher about whom nothing either unusually outstanding or detrimental was known. The rating of very good was given to the teacher who was very accurate in the accounting of funds, protective of school property and reliable in his or her relationship with other members of the school organization. The rating of excellent was given to that exceptional teacher who over long years had evidenced minute attention to all of these items. The rating of fair was given to the teacher who was unreliable, not zealous in the protection of school property and had difficulty in accounting for school finances.

2. Community relationships was interpreted to mean the practice of good citizenship by the meeting of financial obligations and the carrying out of contracts such as leases and other similar transactions, and their deportment in the community in keeping with the position of a teacher.

The divisions of fair, good, very good and excellent were arrived at by considering the records of the individual teacher in these respects. As an illustration, if a teacher failed to live up to his or her financial obligations some years ago, and there were no black marks against his or her name since then, this individual would be rated good. While a teacher who met his or her financial obligations on time and had no complaints registered in other respects would be given a rating of very good. While a teacher who was highly respected in the community morally, active in church work, prompt in meeting all of their obligations would be given a rating of excellent. A teacher below standard with records on file indicating that he or she had broken leases, had failed to meet financial obligations, etc., would be given a rating of fair.

B. Social responsibility as evidenced by:

1. Participation in the development of the teaching profession was interpreted to mean membership in all professional organizations, attendance and participation in professional

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group meetings, and individual contributions to the improvement of the teaching profession.

The divisions of fair, good, very good and excellent were arrived at by giving a rating of good to the teacher with a passive attitude to professional meetings and organizations, and who was occasional in attendance. A rating of very good was given to a teacher who was a member of a large number of professional organizations and regular in attendance and participation. A rating of excellent was given to the teacher who was a member of a large number of organizations, regular in attendance and who was constructively active in participation in the discussions and who exhibits a marked degree of leadership. A rating of fair was given to the teacher who was not interested in being a member of a professional organization and who very seldom, if ever, attended, or to the teacher who attended but attempted to hinder progress of various organizations.

2. Participating in community development was interpreted to mean taking part in activities of direct benefit to the community in which the school was located, such as civic, fraternal, improvement associations, clubs and church attendance. The divisions of fair, good, very good and excellent were arrived at by giving a rating of good to the teacher who had done nothing above the average in participation of community affairs, and where we had evidence of above average participation we gave a very good rating. Where the relationship was outstanding an excellent rating was given. And, where a teacher was not interested in the community in which she or he lived or worked and took no part in community affairs, they were given a rating of only fair.

C. 1. Poise was interpreted to mean a teacher well-balanced, control of oneself at all times and ease under most circumstances.

2. Dress was interpreted to mean properly dressed in keeping with the position of a teacher, neatness, personal grooming, well-kept shoes, etc.

3. Voice was interpreted to mean a speaking personality, pleasing tone, expressiveness, clear enunciation, etc.

4. Courtesy was interpreted to mean relationship with students—sympathetic relationship with teachers, administrative personnel and patrons, graciousness, kindness, politeness.

The divisions of fair, good, very good and excellent were arrived at by giving a rating of good to the teacher who had average ability in poise, dress, voice and courtesy, while a teacher with superior qualities in these four items was given a rating of very good. The teacher who was outstanding in these four items was given a rating of excellent. A rating of fair was given to a teacher who was ill at ease upon being visited in the classroom, not appropriately dressed, a harsh unpleasant voice and who failed in the ordinary civilities.

IV. EFFECTIVENESS OF TEACHING

A. Rating by principal was interpreted to mean the rating given by the principal of the individual teacher through personal conferences with the supervisor and administration officials and on the teacher rating card required each year from the principal concerned.

The divisions of fair, good, very good and excellent were arrived at by an evaluation of the principals' personal statements and written reports, by *averaging the checks in different columns.*

B. The Total evaluation of the effectiveness of teaching was interpreted to mean the opinion of the individual members as to a teacher's classification compared with other teachers in the school system, the supervisors having the opportunity of visiting each school in the system and observing the most outstanding teaching program, being in a better position to evaluate the effectiveness of teaching than the principal who only observed teaching in his or her individual school. We considered getting across subjects in character building, teaching to the whole group, the ability to understand children and child problems, evidences of plan books, lesson preparations, seating plans, up-to-date registers, attractive rooms which contribute to orderliness, good discipline, whole class participation.

The divisions of fair, good, very good and excellent were arrived at by first considering the principal's rating and if in the opinion of the rating committee this teacher was of average ability he or she was given a rating of good, if superior ability very good, and if very unusual and outstanding in effectiveness of teaching, excellent; below the average, fair.

APPENDIX II

TABLE OF DEGREE TEACHERS, both white and colored, employed in the public schools of Dade County, Florida, November 4, 1941, the date on which the colored teachers presented to the defendants their complaint that the policy of The Board of Public Instruction discriminated against them.

Base salaries are those provided for in the schedules and do not include increments for special duties or the $100 allowed to holders of Master Degree.

The official list filed in this action by defendants, offered in evidence by plaintiff, Exhibit 1 of December 6, 1943, gives the total salary, noting the increments. By deducting these we reach the base salary.

The table shows the base salaries payable under the three schedules to all degree teachers, both colored and white for the school year 1941-1942 arranged by years of service together with the classifications.

COLORED DEGREE TEACHERS

	1	2	3	4
One Year Service	Nov. 4/41	Nov. 26/41	April 29/42	Page
Osie Doster	724	724	724	54
Fredericka Dean	724	724	724	54
Geneva M. Knowles	724	724	724	55
Caleb L. Crosby	724	724	724	56
John W. Sanders	724	724	724	57
Genevieve Sands	724	724	724	58
Wilhelmina Franks	724	724	724	58
Mary Louise Bullard	724	724	724	58
Primrose Tibbs	724	724	724	55
Two Year Service				
Robert W. Gray	724	724	724	54
Joseph M. Patterson	724	724	724	55
William Stevens	724	724	724	55
Erma C. Strachan	724	724	724	55
Geneva Collie	732	732	732	55
Clement R. Curry	724	724	1080	56
Cleonie Ward (Mack)	732	732	732	57
Celia Moore (Chappell)	724	724	724	58
Fannie Buggs	724	724	724	59
Three Year Service				
Manatee Bannerman	732	732	780	54
James W. Everett	732	732	840	54
Julius T. Lee	724	724	1140	55
Jane Davis Lewis	732	732	780	55
Anna R. Mitchell	732	732	780	57
Four Year Service				
Ethel A. Bragnon	732	732	840	55
Hubert C. Reynolds	732	732	840	55
Anthony Gardiner	732	832	840	56
James Hart	732	732	840	56
Marie Pate	732	732	840	56
Alma John Crawford	732	732	840	57
Charles Smith	732	732	732	58
Clorice Reeves	732	732	840	58
Josephus L. Bethel	732	732	840	58
Mary Baerk Edwards	732	732	840	57

COLUMN 1 contain1 contains the salaries payable to the colored degree teachers a achers as of November 4, 1941, the date when the complaint of thint of the colored teachers was presented.

COLUMN 2 contain2 contains the salaries payable to the colored teachers under th under the schedule of November 26, 1941.

COLUMN 3 contain3 contains the salaries payable to the said colored teachers u achers under the schedule of April 29, 1942, referred to as a to as an amendment to the November 26, 1941, schedule. thedule, this schedule having been adopted several months aft ths after the beginning of this action.

WHIT WHITE DEGREE TEACHERS

		5	6	7	8
One Year Service	ice	Nov. 4/41	Nov. 26/41	April 29/42	Page
Harold Quincy		1020	1020	1020	4
Virginia Stewart	t	1020	1020	1020	8
Virginia Spaulding	ng	1020	1020	1020	8
Marjorie Jordan		1020	1020	1020	10
Marian Usher		1020	1020	1020	16
Donald B. Bleake	e	1020	1020	1020	16
Sue Robinson		1020	1020	1020	18
Bertha Nehan		1020	1020	1020	20
Linnie Lou Gautier	ier	1020	1020	1020	21
Also 17 other white		r white teachers of one year service all at same base salary.			
Two Year Service	ice	White base salary $1.020			
Jeanne Mankes		1020	1020	1020	3
Rosanna Posey		1020	1020	1020	4
James Womack		1020	1020	1020	5
George Dolan		1020	1020	1020	5
Mary Collier		1020	1020	1020	6
Josephine Cook		1020	1020	1020	7
Betty S. Abrams		1020	1020	1020	7
Betty Mead Dix		1020	1020	1020	8
Katherine Killian	n	1020	1020	1020	10
Also 23 other white		r white teachers of two-year service all at same base salary.			
Three Year Service	vice	White base salary $1.080			
Mary Carlson		1080	1080	1080	36
Louise Gibbons		1080	1080	1080	37
Virginia Swaggs		1080	1080	1080	37
Evelyn Webb		1080	1080	1080	37
Ruth Lockhart		1080	1080	1080	37
Also 35 other white		r white teachers of three-year service all at same base salary.			
Four Year Service	ice	White base salary $1.140			
Virginia Jordan		1140	1140	1140	2
Martha Rose Saunders	nders	1140	1140	1140	4
Willard Shaffert		1140	1140	1140	5
Phyllis Ashworth	h	1140	1140	1140	6
Lois Behrens		1140	1140	1140	7
Sarah B. Brooks		1140	1140	1140	7
Katherine Pratt Fitzer	Fitzer	1140	1140	1140	8
Arlene Richardson	on	1140	1140	1140	15
Norman (Belty) Skeels	Skeels	1140	1140	1140	15
Carl W. Fein		1140	1140	1140	17
Also 24 other white		r white teachers of four year service all at same base salary.			
Five Year Service	ice				
Elizabeth McAfee	ce	1200	1200	1200	2
Robert Heil		1200	1200	1200	3
Patricia Mercer					
Nora C. Rise					
Mary Miscio					

COLUMN 4 contains the pages on w the colored teachers may be found hibit 1 of December 6, 1943, that of defendants.

COLUMN 5 contains the salaries of teachers on November 4, 1941, the ored teachers presented their compl tion, which figures are to be comp aries payable to the colored teache shown in column 1.

COLUMN 6 contains the salaries p white teachers under the schedul 1941, which are to be compared wit able to the colored teachers on the s in column 2.

COLUMN 7 contains the salaries pa gree teachers under the schedule of are to be compared with the sala colored teachers under the same in column 3.

COLUMN 8 contains the pages on w the white teachers listed may be f list. (Plff's Ex. 1 of Dec. 6, 1943.

COLORED DEGREE TE

	1	
Ten Year Service	Nov. 4/41	Nov.
Ida Taylor Ratcliffe	852	8
Andrew Robeson	828	8
Emma Chunn	1032	10
Edith Thompson	876	8
Eleven Year Service		
Osceola B. Horan	948	9
Estelle Waller	876	8
Ermantine Holton	852	8
Mizpah Symonette	948	9
David A. Ivey	876	1
D. Alfred Steward	876	
Annie Little	948	
Twelve Year Service		
Greta E. Crosby	900	
Verma Curtis	852	
Flossie Tucker	948	
Pauline Green	876	
Thena R. Curlin	1056	
(Acting Principal—Now Principal		
Willie Mae Murray	948	
Thirteen Year Service		
Zidia A. Bethel	924	
Alice B. Hall	948	
Hazel Scott Simmons	948	
Florence Moseley	948	
Kate S. Dean	948	
Lillian Mazon	852	
Malvena Moore	948	
Rose F. Stewart	948	

h which the names of
und on Plaintiff's Ex-
hat is, the official list

of the white degree
he date when the col-
mplaint of discrimina-
mpared with the sal-
chers on that date as

s payable to the said
dule of November 26,
with the salaries pay-
e same date as shown

payable to white de-
of April 29, 1942, and
laries payable to the
he schedule as shown

h which the names of
e found on the official
3.)

TEACHERS

2	3	4
ov. 26/41	April 29/42	Page
852	1260	55
828	1260	57
1032	1080	58
876	1080	59
948	1080	55
876	1080	55
852	1080	56
948	1080	56
260	1560	57
876	1080	57
948	1080	58
900	1080	54
852	1080	58
948	1080	58
876	1260	58
		58
260	1620	59
924	1260	54
948	1080	54
948	1260	55
948	1080	56
260	1680	56
852	1080	56
948	1080	56

WHITE DEGREE TEACHERS

	5	6	7	8
Ten Year Service	Nov. 4/41	Nov. 26/41	April 29/42	Page
Walter Fitzpatrick	1500	1500	1500	3
Marjorie Graham	1500	1500	1500	5
Henrietta Graham	1500	1500	1500	5
Elizabeth Nielsen	1500	1500	1500	6

Also 23 other white teachers of 10 year service all at the same base salary.

Eleven Year Service				
Mary L. Kimbrough	1560	1560	1560	2
Mary Leonardi	1560	1560	1560	2
Alfred Alreda Reed	1560	1560	1560	2
Helen Carnine	1560	1560	1560	3
Jessie Chamberlain	1560	1560	1560	3
Dorothy Dale	1560	1560	1560	3
Alice Reed	1560	1560	1560	6

Also 29 other white teachers of 11 year service all at the same base salary.

Twelve Year Service				
Gregg Davies, Jr.	1620	1620	1620	2
Elizabeth Kelly	1620	1620	1620	3
D. E. Moomaw	1620	1620	1620	4
Genevieve Rasco	1620	1620	1620	4
Martha Cohen	1620	1620	1620	6
Martha Mills	1620	1620	1620	7
Mary Sue Holbrook	1620	1620	1620	7

Also 37 other white teachers of 12 year service all at the same base salary.

Thirteen Year Service				
Silvia Furlong	1680	1680	1680	2
Elizabeth White	1680	1680	1680	5
Mabel Hill	1680	1680	1680	6
Elizabeth Armstrong	1680	1680	1680	7
Louise Culligan	1680	1680	1680	8
Eloise Featherstone	1680	1680	1680	10
Alpha Gill	1680	1680	1680	10
Fred McCall	1680	1680	1680	11
Edith J. Etzweiler	1680	1680	1680	13
James S. Hayworth	1680	1680	1680	14
Marg G. Phelan	1680	1680	1680	15

Also 24 other white teachers of 13 year service all at the same base salary.

Fourteen Year Service				
R. E. Pollard	1740	1740	1740	2
Florence Normand	1740	1740	1740	4
Elizabeth Price	1740	1740	1740	4
T. Z. Williams	1740	1740	1740	5
Gladys Washington	1740	1740	1740	6
Juanita Willbraham	1740	1740	1740	6

Also 30 other white teachers of 14 year service all at the same base salary.

Fifteen Year Service

APP

THEN AND NOW—COLORED DEGREE SALARIES

Page of Official List		11/4/41	11/26/41	4/29/42	1942-43	1943-44
One Year Service						
(54)	Fredericka Dean	724	724	724	900	960
(55)	Geneva Knowles	724	724	724	780	900
(55)	Caleb L. Crosby	724	724	724	840	960
(57)	John W. Saunders	724	724	724	780	900
(58)	Wilhelmina Franks	724	724	724	720	840
(58)	Mary Louise Bullard	724	724	724	780	900
(55)	Primrose Tibbs	724	724	724	960	1,080
Two Year Service						
(54)	R. W. Gray	724	724	724	780	900
(55)	Geneva Collie	732	732	732	780	900
(56)	Clement R. Curry	724	724	1,080	1,140	1,260
(57)	Cleonie Ward	732	732	732	780	900
(58)	Celia Moore	724	724	724	780	900
Three Year Service						
(54)	Manatee Bannerman	732	732	780	840	960
(54)	J. W. Everett	732	732	840	840	960
(55)	Jane D. Lewis	732	732	780	840	960
Four Year Service						
(54)	Ethel Braynn	732	732	840	900	1,020
(55)	Hubert C. Reynolds	732	732	840	900	1,020
(56)	James Hart	732	732	840	900	1,020
(57)	Alma L. Johnson	732	732	840	900	1,020
(58)	Clarice Reeves	732	732	840	900	1,020
(57)	Mary Baker Edwards	732	732	840	900	1,020
Five Year Service						
(54)	Greeta Bawl	732	732	900	1,020	1,080
(54)	W. Chapman	732	732	900	960	1,080
(54)	Celesta Hawkins	732	732	900	960	1,080
(56)	Vivalora Gainey	756	756	900	960	1,080
(57)	Mattie O. Reed	732	732	900	960	1,080
(58)	R. Slaughter	756	756	1,200	1,260	1,260
Six Year Service						
(55)	Sarah S. Martin	756	756	960	1,020	1,140
(56)	Eugene Jones	780	780	1,260	1,260	1,320
(56)	Dorothy Edwards	780	780	960	1,020	1,140
(57)	E. Wilson	756	756	960	1,020	1,140
(58)	Louise Capers	756	756	960	1,020	1,080
(58)	Ethel Ray	756	756	960	1,020	1,140
Seven Year Service						
(55)	Hazel Lucas	780	780	1,020	1,080	1,140
(55)	C. D. Wyche	780	1,260	1,320	1,380	1,560
Eight Year Service						
(54)	M. M. Davis	756	756	1,080	1,080	1,080
(55)	Pearl T. Jenkins	804	804	1,080	1,140	1,260
(55)	George W. Styles	804	804	1,080	1,080	1,080
(56)	Alonzo Fannin	804	804	1,080	1,080	1,080
(56)	Marie Doster	828	828	1,080	1,080	1,140
(56)	Dorothy Jenkins	804	804	1,080	absent	1,080
(57)	Gussie Dobbs	804	1,260	1,380	1,440	1,620
Nine Year Service						
(54)	Hazel M. Davis	852	852	1,080	1,080	1,140
(56)	Arthurine Collier	828	828	1,080	1,080	1,140
(57)	Dorothy Newton	828	1,260	1,260	1,500	1,680
(58)	Witlean Ingraham	852	852	1,080	1,080	1,140
(58)	Louise McQueen	828	828	1,080	1,080	1,080
(58)	Nellie Roberts	780	780	1,080	1,080	1,080
(59)	Rosella Everett	828	828	1,080	1,140	1,260
Ten Year Service						
(55)	Ida M. Taylor	852	852	1,260	1,260	1,260
(57)	Andrew Robeson	828	828	1,260	1,260	1,260
(58)	Emma Chun	1,032	1,032	1,080	1,080	1,080
Eleven Year Service						
(55)	Osceola B. Hogan	948	948	1,080	1,080	1,140
(55)	Estelle Waller	876	876	1,080	1,140	1,260

THEN AND NOW-

Page of Official List	
One Year Service	
(7)	Virginia Stewart
(8)	Virginia Spalding
(10)	Marjoria Jordan
(18)	Sue Robinson
(28)	Atwood Kellar—Cad
(31)	Pauline Wade
(31)	Georgia Ball
(33)	Marie Scollin
(38)	Grace Kiesewether—
	(Cadets are not r
Two Year Service	
(5)	James Womack
(7)	Betty S. Abrams
(18)	Eleanor K. Whitcha
(18)	Eleanor Wilson
(23)	Helen Nielson
(25)	Amelise Crockett
(26)	Nellie Turkiewaz
(27)	Hilda Ringblum
(27)	Grace Manley
(29)	Ellogene Barr
(30)	Beatrice Arnold
(34)	Jane Evans Garhett
(34)	Viola Ellis
(36)	Velma Baumgarten
(37)	Murrell Schursted
(37)	Betty Wylie
(39)	Josephine Hill
Three Year Service	
(7)	Allie Ferguson
(13)	Leona Beers
(24)	Phyllis Fossey
(25)	Edith B. Jacobs
(25)	Edith Daniel
(26)	Eleanor Matteson
(26)	Lois V. Arnold
(27)	Margaret Roberts
(28)	Robert Reed
(33)	Ruth Penny
(36)	Mary Carlson
(37)	Louise Gibbons
(37)	Virginia Skaggs
Four Year Service	
(2)	Virginia Jordan
(5)	Willard Shaffert
(15)	Arlene Richardson
(17)	Carl W. Fein
(21)	Lulu Mae Mooty
(23)	Marie Alvarez Nilo
(24)	Marjorie Raulerson
(24)	Myrvin Sellers
(27)	Inez Shellhorse
(27)	Ruth Beuchly
(27)	Mary Kirtley
(28)	Marcia Ferguson
(30)	Mildred Hawkins
(31)	Mary E. Freberg
(32)	Betty Stewart

APPENDIX III

THEN AND NOW—WHITE DEGREE SALARIES

	Under All Schedules 1941/2	1942/3	1943/4
Year Service			
Virginia Stewart	1,020	1,080	1,200
Virginia Spalding	1,020	1,020	1,140
Marjoria Jordan	1,020	1,080	1,140
Sue Robinson	1,020	1,080	1,140
Atwood Kellar—Cadet	720	1,080	1,200
Pauline Wade	1,020	1,080	1,200
Georgia Ball	1,020	1,020	1,140
Marie Scollin	1,020	1,020	1,140
Grace Kiesewether—Cadet	720	1,080	1,140
(Cadets are not regular teachers)			
Year Service			
James Womack	1,020	1,140	1,260
Betty S. Abrams	1,020	1,140	1,260
Eleanor K. Whitehard	1,020	1,140	1,260
Eleanor Wilson	1,020	1,140	1,260
Helen Nielson	1,020	1,140	1,260
Amelise Crockett	1,020	1,140	1,260
Nellie Turkiewaz	1,020	1,140	1,260
Hilda Ringblum	1,020	1,140	1,260
Grace Manley	1,020	1,140	1,260
Ellogene Barr	1,020	1,140	1,260
Beatrice Arnold	1,020	1,140	1,260
Jane Evans Garhett	1,020	1,140	1,260
Viola Ellis	1,020	1,140	1,260
Velma Baumgarten	1,020	1,140	1,260
Murrell Schursted	1,020	1,140	1,260
Betty Wylie	1,020	1,140	1,260
Josephine Hill	1,020	1,140	1,260
r Year Service			
Allie Ferguson	1,080	1,200	1,320
Leona Beers	1,080	1,200	1,320
Phyllis Fossey	1,080	1,200	1,320
Edith B. Jacobs	1,080	1,200	1,320
Edith Daniel	1,080	1,200	1,320
Eleanor Matteson	1,080	1,200	1,320
Lois V. Arnold	1,080	1,200	1,320
Margaret Roberts	1,080	1,200	1,320
Robert Reed	1,080	1,200	1,320
Ruth Penny	1,080	1,200	1,320
Mary Carlson	1,080	1,200	1,320
Louise Gibbons	1,080	1,200	1,320
Virginia Skaggs	1,080	1,200	1,320
Year Service			
Virginia Jordan	1,140	1,260	1,320
Willard Shaffert	1,140	1,200	1,260
Arlene Richardson	1,140	1,260	1,320
Carl W. Fein	1,140	1,260	1,320
Lulu Mae Mooty	1,140	1,260	1,320
Marie Alvarez Nilon	1,140	1,260	1,320
Marjorie Raulerson	1,140	1,260	1,320
Myrvin Sellers	1,200	1,260	1,320
Inez Shellhorse	1,140	1,260	1,320
Ruth Beuchly	1,140	1,260	1,320
Mary Kirtley	1,140	1,260	1,320
Marcia Ferguson	1,140	1,260	1,320

Page of Official List	
Eight Year Service	
(3)	T. W. Caruther
(7)	E. B. Blackburn
(7)	R. J. Hester
(8)	Mildred Reynold
(13)	L. E. Cappock
(15)	Marguerite Rus
(21)	Frances Dye
(21)	Clarence H. Dre
(22)	Dorothy N. Wri
(23)	Lucile Conlon
(23)	Hazel Rothwell
(23)	Susie Campbell
(25)	Kathryn Middle
(26)	Gladys Budd
(27)	Jane Barr
(28)	Mary Jo Robert
(28)	Mary Lou Walke
(29)	Lola Bass
(30)	Ida Edwards
(31)	Helen Littlefield
(32)	Dayme Patterso
(31)	Lois Woodbury
(32)	Enid Carrington
(33)	Julia Tygert
(34)	Jessie Davison
(34)	Edell Herring
(35)	Myrtle Scheer
(36)	Sophya Wolfe
Nine Year Service	
(5)	Louise Sparrent
(6)	Everett Pease
(6)	Elizabeth Wray
(7)	Mrs. R. J. Rutla
(7)	Mucy N. Carter
(9)	Melicent Chamb
(11)	Valina Moore
(14)	Elizabeth Hurst
(14)	Marie O'Neill
(16)	Frances D. Wyr
(17)	Roberta Leonar
(18)	Eloise Patterson
(18)	Rebecca Gray
(21)	Eva D. Fisher
(24)	Beasly Moore
(25)	Semele Corbett
(28)	Frances Wilson
(14)	Artie M. Henry
(30)	Margaret Cruise
(31)	Goldie Polhemus
(31)	Gladys H. Spraw
(32)	Marion K. Moor
(33)	Josephine Rose
(34)	Rose Goldmark
(35)	Mabel Ellis
(35)	Evelyn Aber
(36)	Gladys Keith
(36)	Mary Moore
(37)	Dorothy Heald
(38)	Velma Falks
(38)	Lucile Maxwell
Ten Year Service	

RIES 1943/4	Page of Official List		1941/2	1942/3	1943/
		Eight Year Service			
	(3)	T. W. Caruther	1.380	1.440	1,620
1,200	(7)	E. B. Blackburn	1.380	1.440	1,620
1,140	(7)	R. J. Hester	1.380	1.440	1,620
1,140	(8)	Mildred Reynold	1.380	1.440	1,620
1,140	(13)	L. E. Cappock	1.380	1.440	1,620
1,200	(15)	Marguerite Russell	1.380	1.440	1,620
1,200	(21)	Frances Dye	1.380	1.440	1,620
1,140	(21)	Clarence H. Dreppard	1.380	1.440	1,620
1,140	(22)	Dorothy N. Wright	1.380	1.440	1,620
1,140	(23)	Lucile Conlon	1.380	1.440	1,620
	(23)	Hazel Rothwell	1.380	1.440	1,620
	(23)	Susie Campbell	1.380	1.440	1,620
	(25)	Kathryn Middleton	1.380	1.440	1,620
	(26)	Gladys Budd	1.380	1.440	1,620
1,260	(27)	Jane Barr	1.380	1.440	1,620
1,260	(28)	Mary Jo Roberts	1.380	1.440	1,620
1,260	(28)	Mary Lou Walker	1.380	1.440	1,620
1,260	(29)	Lola Bass	1.380	1.440	1,620
1,260	(30)	Ida Edwards	1.380	1.440	1.620
1,260	(31)	Helen Littlefield	1.380	1.440	1.620
1,260	(32)	Dayme Patterson	1.380	1.440	1.620
1,260	(31)	Lois Woodbury	1.380	1.440	1.620
1,260	(32)	Enid Carrington	1.380	1.440	1.620
1,260	(33)	Julia Tygert	1.380	1.440	1.620
1,260	(34)	Jessie Davison	1.380	1.440	1.620
1,260	(34)	Edell Herring	1.380	1.440	1.620
1,260	(35)	Myrtle Scheer	1.380	1.440	1.620
1,260	(36)	Sophya Wolfe	1.380	1.440	1.620
1,260					
1,260		**Nine Year Service**			
1,260	(5)	Louise Sparrenberger	1.440	1.500	1.680
	(6)	Everett Pease	1.440	1.500	1.680
	(6)	Elizabeth Wray	1.440	1.500	1.680
	(7)	Mrs. R. J. Rutland	1.440	1.500	1.680
	(7)	Mucy N. Carter	1.440	1.500	1.680
1,320	(9)	Melicent Chamberlain	1.440	1.500	1.680
1,320	(11)	Valina Moore	1.440	1.500	1.680
1,320	(14)	Elizabeth Hurst	1.440	1.500	1.680
1,320	(14)	Marie O'Neill	1.440	1.500	1.680
1,320	(16)	Frances D. Wynne	1.440	1.500	1.680
1,320	(17)	Roberta Leonardy	1.440	1.500	1.680
1,320	(18)	Eloise Patterson	1.440	1.500	1.680
1,320	(18)	Rebecca Gray	1.440	1.500	1.680
1,320	(21)	Eva D. Fisher	1.440	1.500	1.680
1,320	(24)	Beasly Moore	1.440	1.500	1.680
1,320	(25)	Semele Corbett	1.440	1.500	1.680
1,320	(28)	Frances Wilson	1.440	1.500	1.680
1,320	(14)	Artie M. Henry	1.440	1.550	1.680
	(30)	Margaret Cruise	1.440	1.500	1.680
	(31)	Goldie Polhemus	1.440	1.500	1.680
	(31)	Gladys H. Sprawls (Hayes)	1.440	1.500	1.680
1,320	(32)	Marion K. Moore	1.440	1.500	1.680
1.260	(33)	Josephine Rose (Ross)	1.440	1.500	1.680
1,320	(34)	Rose Goldmark	1.440	1.500	1.680
1,320	(35)	Mabel Ellis	1.440	1.500	1.680
1,320	(35)	Evelyn Aber	1.440	1.500	1.680
1,320	(36)	Gladys Keith	1.440	1.500	1.680
1,320	(36)	Mary Moore	1.440	1.500	1.680
1,320	(37)	Dorothy Heald	1.440	1.500	1.680
1,320	(38)	Velma Falks	1.440	1.500	1.680
1,320	(38)	Lucile Maxwell	1.440	1.500	1.680
1,320					
1,320		**Ten Year Service**			
1,320	(5)	Marjorie England	1.500	1.560	1.740
1,320	(5)	Henrietta Graham	1.500	1.560	1.740
1,320	(6)	Elizabeth Nielsen	1.500	1.560	1.740
1,320	(9)	William Duncan	1.500	1.560	1.740

Hubert C. Reynolds	732	732	840	55
Anthony Gardiner	732	832	840	56
James Hart	732	732	840	56
Marie Pate	732	732	840	56
Alma John Crawford	732	732	840	57
Charles Smith	732	732	732	58
Clorice Reeves	732	732	840	58
Josephus L. Bethel	732	732	840	58
Mary Baerk Edwards	732	732	840	57

Five Year Service

Gretha Bawl	732	732	900	54
Harold A. Barker	732	1260	1260	54
Wilhelmina Chapman	732	732	900	54
Wm. B. Haley	756	756	900	54
Celeste P. Hawkins	732	732	900	54
Vivalora Gainey	756	756	900	55
Mattie O. Reed	732	732	900	57
Rutherford Slaughter	756	756	1200	58
James M. Simmons	756	756	900	59

Six Year Service

Albert P. Dean	756	756	960	55
Sarah Scott Martin	756	756	960	55
Charles Carey	756	756	960	55
Eugene Jones	780	780	1260	56
Dorothy Edwards	780	780	960	56
Harriet Turner	780	780	960	57
Eadie Wilson	756	756	960	57
Josephine Burnside	756	756	960	58
Louise Capers	756	756	960	58

Seven Year Service

Albert F. Crosby	828	1260	1320	54
Hazel R. Lucas	780	780	1020	55
William J. Stirrup	780	780	1020	55
Charles D. Wyche	780	1260	1320	55

Eight Year Service

Margaret M. Davis	756	756	1080	54
Pearl T. Jenkins	804	804	1080	55
George W. Styles	804	804	1080	55
Alonzo Fannin	804	804	1080	56
James Hogan	804	804	1260	56
Marie H. Doster	828	828	1080	56
Dorothy Jenkins	804	804	1080	56
Susie C. Lucas	900	1260	1380	57
Gussie Dobbs	804	1260	1380	57
Bertha Glass	804	804	1080	59
Marjorie Rhodes	804	804	1080	59

Nine Year Service

Lewis R. Blake	828	828	1260	54
Hazel M. Davis	852	852	1080	54
Arthurine Collier	828	828	1080	56
William Fannin	828	828	1080	56
Dorothy Newton	828	1260	1440	57
Wittlean Ingraham	852	852	1080	58
Louise McQueen	828	828	1080	58
Nellie Roberts	780	780	1080	58
Rosella Everett	828	828	1080	59
Elizabeth Holmes	876	876	1080	59
Thelma H. Simmons	828	828	1080	59

Carl W. Fein

Also 24 other white t… base salary.

Five Year Service

Elizabeth McAfee	…Afee	1200	1200	1200	2
Robert Heil		1200	1200	1200	3
Patricia Mercer	…er	1200	1200	1200	4
Nora C. Rise		1200	1200	1200	8
Mary Miscio		1200	1200	1200	4
Emily Brion		1200	1200	1200	
Varina Smith		1200	1200	1200	8
J. G. Wynne, Jr.	…Jr.	1200	1200	1200	8
Roselyn Levine	…e	1200	1200	1200	10

Also 28 other white t… ther white teachers of five-year service all at same base salary.

Six Year Service …vice White base salary $1,260

Mary McCracken	…ken	1360	1360	1360	3
Lucille Coppock	…k	1260	1260	1260	5
Annie Lee Rollins	…lins	1260	1260	1260	15
Fred Lugencshe	…e	1260	1260	1260	19
Martha Lewis		1260	1260	1260	10
Clairnelle Weber	…er	1260	1260	1260	24
Maxine Songer	…r	1260	1260	1260	25
Janice Brill		1260	1260	1260	25
Marion Ryan		1260	1260	1260	27
Louise Ott		1260	1260	1260	28

Also thirteen other wh… n other white teachers of six-year service all at same base salary.

Seven Year Service …rvice

Dorothy Godman	…an	1320	1320	1320	3
Thelma Grentner	…er	1320	1320	1320	3
Marguerite Mills	…ls	1320	1320	1320	4
James Rice		1320	1320	1320	8

Also forty-two other … …-two other white teachers of seven-year service all at same base salary.

Eight Year Service …rvice White base salary $1,380

Josephine Hoffman	…man	1380	1380	1380	2
T. W. Carruthers	…rs	1380	1380	1380	3
Christine Stenstrom	…strom	1380	1380	1380	5
Sarah Waters		1380	1380	1380	5
Alice Wirt		1380	1380	1380	5
Ralph Paige		1380	1380	1380	6
E. B. Blackburn	…n	1380	1380	1380	7
R. J. Hester		1380	1380	1380	7
Mildred Reynolds	…lds	1380	1380	1380	8
G. Winston Clark	…ark	1380	1380	1380	9
R. C. Ashworth	…l	1380	1380	1380	12

Also 39 other white … her white teachers of 8 years service all at the same base salary.

Nine Year Service …vice

J. Harold Matteson	…eson	1440	1440	1440	2
H. O. Schweitzer	…er	1440	1440	1440	2
Louise Sparrenger	…ger	1440	1440	1440	5
Catherine Swink	…k	1440	1440	1440	5
Elizabeth Wray	…y	1440	1440	1440	6
Everett Pease		1440	1440	1440	6
Mrs. R. J. Rutland	…land	1440	1440	1440	7
Milton F. Scott		1440	1440	1440	8
Lucy N. Carter Heam	…Heam	1440	1440	1440	7
Milicent Chamberlain	…erlain	1440	1440	1440	9

Ten Year Service …ice

Fleeta Haskins		1500	1500	1500	10

Also 41 other white … her white teachers of 9 years service all at the same base salary.

Florence Moseley	948
Kate S. Dean	948
Lillian Mazon	852
Malvena Moore	948
Rose F. Stewart	948
Frances Trapp	924
Helen Goodwin	876
Alice Hawkins	900

Fourteen Year Service

Louise D. Davis	924
Oscar J. Edwards	900
Agnes C. Henderson	828
Mary F. Johnson	948
Ethel A. Grice	852
Annette McNeal	876

Fifteen Year Service

Charles L. Austin	948
Emanuel C. Bowman	948
Nella F. Clifton	948
Willie Hue Jamison	948
Aliene V. Jones	948
Sara B. Joyner	948
Marie D. Roberts	948
Effie T. Sutton	948
Eunice B. Thorne	948
Lelia R. Williams	948
Annie F. O'Ferrell	948
Bertie Baldwin	948
Ethel Dunn	948
Maud Green	948
Marie Clark House	948
Elizabeth N. Pittman	948
Madelyn R. Thomson	948
Bertha R. Sharpe	948
Vera Austin	948
Maude Chandler	948
Eunice Liberty	948
Esther Norris	948
Jenette Deshazior	948
Minne Sams Swan	948
Eunice Tanner	948
Victoria Webb	948
Estelle Miles	846
Roberta Chayter	948
Iona Humbert	948
Hettie W. Hall	924

Sixteen Year Service

Marie Slaughter	948
Janette A. Gill	828
Betsy A. Gordon	948
Ethel Arnold	948
Irene Straughter	948
Emily C. Thomas	948
Linnie W. Fannin	846
Naomi Espy	948

Seventeen Year Service

Nellie B. Moore	948
Helena Sifontes	948

Twenty Year Service

Jenette Bellamy	948

948	1260	55
948	1080	56
1260	1680	56
852	1080	56
948	1080	56
948	1080	57
924	1080	58
876	1080	59
900	1080	59
924	1080	54
900	1080	54
828	1080	54
948	1080	56
852	1080	57
876	1080	57
948	1080	54
948	1080	54
948	1080	54
948	1080	55
948	1260	55
948	1080	55
948	1260	55
1260	1260	55
948	1080	55
948	1080	55
948	1260	56
948	1080	56
948	1080	56
948	1080	56
948	1260	56
1260	1740	56
948	1080	57
948	1080	57
948	1080	57
948	1080	57
1260	1740	58
948	1080	58
948	1260	58
948	1080	58
948	1080	58
948	1260	58
1260	1740	59
1260	1740	59
948	1260	59
924	1080	59
1260	1740	55
828	1260	56
948	1260	57
948	1080	57
948	1080	57
948	1080	58
1260	1260	58
948	1080	59
948	1080	57
948	1260	59
948	1080	57

Also 30 other white teachers of 14 year service all at the same base salary.

Fifteen Year Service

Valera Gregory	1740	1740	1740	3
Kaye O. Thompson	1740	1740	1740	5
Cleta Worley	1740	1740	1740	5
Wilbur C. Worley	1740	1740	1740	5
Mabel Wright Lyons	1740	1740	1740	5
Mildred Small	1740	1740	1740	6
Thomas K. MacDonell	1740	1740	1740	7
J. M. Aber	1740	1740	1740	8
Johnsie Bracken	1740	1740	1740	9
Esther Cronin	1740	1740	1740	9
James Hudson	1740	1740	1740	10
Sarah Jenkins	1740	1740	1740	10
Emily Murphy	1740	1740	1740	11
Katherine Palmer	1740	1740	1740	11
Thelma Peters	1740	1740	1740	11
Cleta Cleveland	1740	1740	1740	13
Lamar Louise Curry	1740	1740	1740	13
Chester M. Davison	1740	1740	1740	13
Carolyn Fielder	1740	1740	1740	13
Horace E. Reichey	1740	1740	1740	15
Faye W. Simon	1740	1740	1740	15
Floyd W. Taylor	1740	1740	1740	21
Virginia R. Cooper	1740	1740	1740	22
Louise Curray	1740	1740	1740	23
Lucille Cunningham	1680	1680	1680	23
Vernon Pike	1740	1740	1740	24
Lilla Hubert	1740	1740	1740	24
Elizabeth Enecks	1740	1740	1740	26
Louise Leake	1740	1740	1740	27
Grace Barnes	1740	1740	1740	28

Also 21 other white teachers of 15 year service all at the same base salary.

Sixteen Year Service

Edna K. Roaf	1740	1740	1740	2
Blanche Stoddard	1740	1740	1740	3
Mary M. Clark	1740	1740	1740	3
Luellen Hauzer	1740	1740	1740	3
Wesley E. Jenkins	1740	1740	1740	3
Charles McCracken	1740	1740	1740	3
Jessie McLaurin	1740	1740	1740	4
Susan Satterfield	1740	1740	1740	5

Also 101 other white teachers of 16 years service all at same base salary.

Seventeen Year Service

Ada Lee Harris	1740	1740	1740	2
Ferne B. Beach	1740	1740	1740	3

Also 98 other white teachers of 17 year service all at the same base salary.

Twenty Year Service

Anna Guito	1740	1740	1704	2

Also 26 other white teachers of 20 years service all at same base salary.

It will be noted that there were no changes of white teachers' salaries under the new schedules for 1941-2 and that the salaries of the colored teachers under the Nov. 26 '41 schedule with but a trifling few remained the same as under the protested schedule.

Eleven Year Service

(55) Osceola B. Hogan	948	948	1,080	1,080	1,140
(55) Estelle Waller	876	876	1,080	1,140	1,260
(56) Ermantine Holton	852	852	1,080	1,080	1,080
(57) David A. Ivey	876	1,260	1,560	1,620	1,800
(57) D. Alfred Stewart	876	876	1,080	1,080	1,080
(58) Annie Little	948	948	1,080	1,080	1,080

Twelve Year Service

(54) Greta E. Crosby	900	900	1,080	1,080	1,140
(58) Verma Curtis	900	900	1,080	1,080	1,140
(58) Madeline Portier	852	852	1,080	1,080	1,320
(59) Willa Mae Murray	948	1,260	1,620	1,680	1,800

Thirteen Year Service

(54) Zidia A. Bethel	924	924	1,260	1,320	1,440
(54) Alice B. Hall	948	948	1,080	1,140	1,260
(55) Hazel Scotto	948	948	1,260	1,320	1,440
(56) Florence Moseley	948	948	1,080	1,080	1,140
(56) Kate S. Dean	948	1,260	1,680	1,740	1,800
(56) Lillian Mazon	852	852	1,080	1,140	1,260
(56) Malvena Moore	948	948	1,080	1,080	1,080
(58) Frances Trapp	924	924	1,080	1,080	1,080
(59) Helen Goodwin	876	876	1,080	1,080	1,140
(59) Alice Hawkins	900	900	1,080	1,080	1,140

Fourteen Year Service

(54) Louise B. Davis	924	924	1,080	1,080	1,080
(54) Oscar J. Edwards	900	900	1,080	1,080	1,140
(56) Mary F. Johnson	948	948	1,080	1,140	1,260
(57) Ethel A. Grice	852	852	1,080	1,140	1,260
(57) Annette McNeal	876	876	1,080	1,080	1,080

Fifteen Year Service

(54) Emanuel C. Bowman	948	948	1,080	1,080	1,140
(54) Nelle F. Clifton	948	948	1,080	1,140	1,260
(55) Willie Hue Jameson	948	948	1,080	1,080	1,140
(55) Alene V. Jones	948	948	1,260	1,260	1,260
(55) Sarah B. Jayner	948	948	1,080	1,080	1,140
(55) Marie D. Roberts	948	948	1,260	1,320	1,440
(55) Effie T. Sutton	948	1,260	1,260	1,260	1,320
(55) Lelia R. Williams	948	948	1,080	1,080	1,140
(56) Annie F. O'Ferrell	948	948	1,260	1,320	1,440
(56) Bertie Baldwin	948	948	1,080	1,080	1,140
(56) Maud Green	948	948	1,080	1,080	1,080
(56) Marie Clark House	948	948	1,260	1,260	1,260
(56) Elizabeth N. Pittman	948	948	1,260	1,260	1,260
(57) Madelyn R. Thompson	948	948	1,080	1,080	1,140
(57) Bertha Sharpe	948	948	1,080	1,140	1,200
(57) Vera Austen	948	948	1,080	1,140	1,260
(57) Maude Chandler	948	948	1,080	1,080	1,200
(58) Eunice Liberty	948	1,260	1,740	1,800	1,800
(58) Esther Norris	948	948	1,080	1,080	1,080
(58) Jenette Deshazior	948	948	1,260	1,260	1,260
(58) Minnie S. Swan	948	948	1,080	1,080	1,140
(58) Eunice Tanner	948	948	1,080	1,080	1,140
(58) Victoria Webb	948	948	1,260	1,260	1,260
(59) Roberta Chayter	948	1,260	1,740	1,800	1,800
(59) Iona Humbert	948	948	1,260	1,260	1,260
(59) Hettie W. Hall	924	924	1,080	1,080	1,140

Sixteen Year Service

(55) Marie Slaughter	948	1,260	1,740	1,800	1,800
(56) Janette Gill	828	828	1,260	1,260	1,320
(57) Betsy A. Gordon	948	948	1,260	1,260	1,260
(57) Ethel Arnold	948	948	1,080	1,080	1,140
(57) Irene Straughter	948	948	1,080	1,080	1,140
(58) Emily C. Thomas	948	948	1,080	1,080	1,140
(58) Linnie W. Fannin	948	1,260	1,260	1,260	1,320
(59) Naomi Espy	948	948	1,080	1,140	1,260

Seventeen Year Service

(57) Nellie B. Moore	948	948	1,080	1,080	1,080
(59) Helena Sifontes	948	948	1,260	1,260	1,260

Twenty Year Service

(57) Jenette Bellamy	948	948	1,080	1,080	1,080

(30) Mildred Hawkins	1,140	1,260	1,320
(31) Mary E. Freberg	1,140	1,260	1,320
(32) Betty Stewart	1,140	1,260	1,320
(32) Katye Brown	1,140	1,260	1,320
(34) Martha Jean Jones	1,140	1,260	1,320
(36) Grace Duvall	1,140	1,260	1,320
(37) Ethel Dunsmore	1,140	1,260	1,320
(37) Marie Fein	1,140	1,200	1,320

Five Year Service

(4) Mary Miscio	1,200	1,260	1,440
(8) Nora C. Rice	1,200	1,260	1,380
(8) J. G. Wynn Jr.	1,200	1,260	1,380
(21) Mary Ellen Lovelace	1,200	1,260	1,380
(21) Lawrence Tremblay	1,200	1,260	1,380
(26) Louise Jay	1,200	1,260	1,320
(27) Nina Miller	1,200	1,260	1,320
(30) Harriet Simms	1,200	1,260	1,440
(30) Sylvia Caruthers	1,200	1,260	1,320
(30) Wilma Halderman	1,200	1,260	1,440
(31) Ethel Stratton	1,200	1,260	1,440
(33) Mary Elizabeth McCall	1,200	1,260	1,380
(37) Nedna Carpenter	1,200	prior	1,440

Six Year Service

(3) Mary McCrackin	1,260	1,320	1,500
(15) Annie Lee Rollins	1,260	1,320	1,500
(25) Janice Brill	1,260	1,320	1,500
(27) Marion Ryan	1,260	1,320	1,500
(28) Louise Ott	1,260	1,320	1,500
(28) Helen Lundilius	1,260	1,320	1,500
(29) Irene Peeples	1,260	1,320	1,500
(30) Ruth A. Murray	1,260	1,320	1,500
(32) Hilda Wier	1,260	1,320	1,500
(33) Nora McKinney	1,260	1,320	1,500
(38) Ray Miller	1,260	1,320	1,500
(37) Katherine Singleton	1,260	1,320	1,500

Seven Year Service

(4) Marguerite Mills	1,320	1,380	1,560
(8) James Rice	1,320	1,380	1,560
(9) Virginia Bradford	1,320	1,380	1,560
(9) Virginia Buyer	1,320	1,380	1,560
(9) Mary C. Cook	1,320	1,380	1,560
(9) Ruth Dale	1,320	1,380	1,560
(9) Frances E. Gibbons	1,320	1,380	1,560
(11) Jessie M. Chambers	1,320	1,380	1,560
(12) Mildred Snedeker	1,320	1,380	1,560
(13) Barbara Garfinkle	1,320	1,380	1,560
(19) Donald Gordon	1,320	1,380	1,560
(19) Helen Kunde	1,320	1,380	1,560
(19) Elizabeth Lewis	1,320	1,380	1,560
(20) Hal M. Black	1,320	1,380	1,560
(23) Dorothy Bass	1,320	1,380	1,560
(24) Kathleen McMullen	1,320	1,380	1,560
(25) Elizabeth White	1,320	1,380	1,560
(30) Laura Bowman	1,320	1,380	1,560
(30) Mary T. Furry	1,320	1,380	1,560
(31) Janive Popham	1,320	1,380	1,560
(31) Mae M. Walters	1,320	1,380	1,560
(33) Lindley Stanley	1,320	1,380	1,560
(33) Del M. Barrett	1,320	1,380	1,560
(34) Mary Morris	1,320	1,380	1,560
(34) Charlotte Farley	1,320	1,380	1,560
(36) Hazel Blanchard	1,320	1,380	1,560
(36) Ruth C. Bunn	1,320	1,380	1,560
(38) Daisy Wetmore	1,320	1,380	1,560
(38) Lois Taylor	1,320	1,380	1,560

1.320	**Ten Year Service**				
1.320	(5)	Marjorie England	1.500	1.560	1.740
1.320	(5)	Henrietta Graham	1.500	1.560	1.740
1.320	(6)	Elizabeth Nielsen	1.500	1.560	1.740
1.320	(9)	William Duncan	1.500	1.560	1.740
1.320	(12)	Wilberta Vogh	1.500	1.560	1.740
1.320	(18)	Clarence Gray	1.500	1.560	1.740
1.320	(25)	Carrie Hope	1.500	1.560	1.740
1.320	(26)	Marie Phillips	1.500	1.560	1.740
	(26)	Martha L. Shaw	1.500	1.560	1.740
	(27)	Erma Henry	1.500	1.560	1.740
	(27)	Paula Lingg	1.500	1.560	1.740
	(28)	Peryl Redden	1.500	1.560	1.740
1.440	(30)	Elizabeth Holt (Kohl)	1.500	1.560	1.740
1.380	(31)	Blanche Lundstrom	1.500	1.560	1.740
1.380	(31)	Marie Clarke	1.500	1.560	1.740
1.380	(33)	Neva Hummel	1.500	1.560	1.740
1.380	(34)	Winnie D. McKenzie	1.500	1.560	1.740
1.320	(34)	Ruth Speights	1.500	1.560	1.740
1.320	(34)	Faith Corneilson	1.500	1.560	1.740
1.440	(37)	Catherine Pile	1.500	1.560	1.740
1.320	(38)	Elizabeth Bronson	1.500	1.560	1.740
1.440					
1.440	**Eleven Year Service**				
1.380	(2)	Mary L. Kimbrough	1.560	1.620	1.800
1.440	(2)	Alfreda Reed	1.560	1.620	1.800
	(3)	Helen Carnine	1.560	1.620	1.800
	(3)	Jessie Chamberlain	1.560	1.620	1.800
	(3)	Dorothy Dale	1.560	1.620	1.800
1.500	(6)	Alice Reed	1.560	1.620	1.800
1.500	(20)	Frank L. Peterson	1.560	1.620	1.800
1.500	(22)	Harriet H. Shaffert	1.560	1.620	1.800
1.500	(23)	Louis Jefferson	1.560	1.620	1.800
1.500	(23)	Mildred Scott	1.560	1.620	1.800
1.500	(23)	Sarah J. Shelden	1.560	1.620	1.800
1.500	(23)	Bernice Bowman	1.560	1.620	1.800
1.500	(24)	Hazel Crawford	1.560	1.620	1.800
1.500	(25)	Irene Boring	1.560	1.620	1.800
1.500	(25)	Frances Tatum	1.560	1.620	1.800
1.500	(28)	Evelyn Meredith	1.560	1.620	1.800
1.500	(30)	Louis C. Clark	1.560	1.620	1.800
	(31)	Maude Martin	1.560	1.620	1.800
	(31)	Frances Overton	1.560	1.620	1.800
	(31)	Helen Potter	1.560	1.620	1.800
1.560	(32)	Lorean Moser	1.560	1.620	1.800
1.560	(34)	Anne Jacob	1.560	1.620	1.800
1.560	(34)	Marie A. Nees	1.560	1.620	1.800
1.560	(34)	Lucy Haskin	1.560	1.620	1.800
1.560	(35)	Louise Hackett	1.560	1.620	1.800
1.560	(35)	Dorothy Scott	1.560	1.620	1.800
1.560	(36)	Catherine B. Hayes	1.560	1.620	1.800
1.560	(37)	Eva Kemperer	1.560	1.620	1.800
1.560					

It is deemed unnecessary to continue the list further for every white teacher from 11 year service on received $1.800, the maximum salary payable to them under the Schedule, **some 500 of them.**

This table shows, and nothing could be plainer, that salaries of white teachers under all the schedules and alleged ratings depended solely on years of service not on classification beginning at the minimum of $1.020, while the negroes in spite of schedules were handicapped with the minimum of $724.

However, it does appear in the column of the white salaries for 1943-4 that 5 of the 13 four year teachers advanced from the "good" classification salary of $1.260 which they received in 1942-3, were paid more than "one additional annual increment" to which they were entitled under the schedule of July 21, 1943. (Rec. P. 60.)

It is interesting to note that out of 56 colored teachers who had been in the service for from 11 to 20 years only 6 were deemed worthy of the salary paid to all of the white teachers of from 11 years service on, some 500, namely, $1,800.

The entire record shows that the only classification was negroes as negroes and whites as whites.

SEP 10 1945
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1945

No. 296

HUBERT C. REYNOLDS, suing on behalf of himself and others having common rights and interests,

Petitioner and
Appellant below,

vs.

BOARD OF PUBLIC INSTRUCTION for the County of Dade, State of Florida, and JAMES T. WILSON,

Respondents and
Appellees below.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

~~STATEMENT OF THE CASE~~

JOHN J. LINDSEY
J. VELMA KEEN
R. W. SHACKLEFORD
Counsel for Respondents

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Tallahassee, Florida
Shackleford, Farrior & Shannon
Tampa, Florida
Of Counsel

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1945

No._____

HUBERT C. REYNOLDS, suing on behalf of himself and others having common rights and interests,

Petitioner and
Appellant below,

vs.

BOARD OF PUBLIC INSTRUCTION for the County of Dade, State of Florida, and JAMES T. WILSON,

Respondents and
Appellees below.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

The petitioner, Hubert C. Reynolds, a colored teacher in the public schools of Dade County, Florida, brought this suit on behalf of himself and other teachers and principals in the public schools of Dade County. The suit is a class action (R. 1 and 4-5) on behalf of the colored teachers and

principals employed in the Dade County public schools and seeks to obtain relief for colored teachers and principals *as a class or group* and not for the plaintiff, Hubert C. Reynolds or any other particular teacher or principal from an alleged policy, custom and usage of the defendants of paying higher salaries to white teachers and principals *as a class or group* than they pay to negro teachers or principals *as a group* solely because of the race or color of the colored teachers and principals.

The complaint (R. 1) was filed February 17, 1942, and alleged that the plaintiffs are colored persons, citizens and residents of Florida and are employed as teachers and principals in the public schools of Dade County and that notwithstanding the fact that they hold the same certificates issued by the State as are held by white teachers and that they perform the same services as are performed by the white teachers, yet the defendant Board of Public Instruction of Dade County pays the colored teachers and principals lower salaries than they pay its white teachers and principals solely because of the race or color of the colored teachers and principals contrary to the Fourteenth Amendment to the Constitution of the United States. The relief sought is a declaratory judgment and injunction (1) declaring that the policy, custom and usage by which the defendants pay lower salaries to the colored teachers and principals than they pay to white teachers and principals is based solely upon the race or color of the colored teachers and principals and that this is a violation of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States; (2) restraining the defendants from continuing the policy, custom and usage complained of and (3) awarding costs to the plaintiff.

On March 12, 1942, the defendants filed their answer (R. 6) in which they (1) denied the material allegations of

unlawful discrimination against plaintiffs and (2) alleged that the colored teachers *as a class or group* do not exercise the same duties or perform services substantially equivalent to those exercised and performed by the white teachers *as a class or group* and that the value of the services performed by the colored teachers as a class or group is substantially less than the value of the duties exercised and the services performed by the white teachers *as a class or group* with identical state certificates and with the same number of years of experience and (3) alleged that on November 26, 1941, the Board adopted a salary schedule to the end and for the purpose of fairly and accurately classifying all the instructional personnel of Dade County, and on April 29, 1942, the Board amended the salary schedule and that thereafter all teachers and principals colored as well as white, were rated thereunder and all salaries paid and to be paid are determined without discrimination as to race or color under the schedule as amended, in accordance with the policy of the Board to pay the instructional personnel, colored as well as white, salaries commensurate with their respective abilities and qualifications and services rendered without regard to race or color.

Thereafter seven additional defenses (R. 42) were filed but only additional defense No. 7 is material as no evidence was introduced on the remaining six additional defenses. The seventh additional defense (R. 49) was to the effect that all teachers and principals, colored as well as white, had been rated and their salaries were being paid under the schedule of November 26, 1941, as amended April 29, 1942, without discrimination as to race or color but solely upon the basis of their respective ability and qualifications and services performed pursuant to the terms of the schedule as amended and that the ratings had been completed since the filing of the original answer May 12, 1942. The new school year 1942-

1943 began on July 1, 1942, which was after the filing of the answer on May 12, 1942.

Thereafter on December 6, 1943 (R. 52) additional defense No. 8 was filed which in substance alleged: that on July 21, 1943, the Board further amended the salary schedule (R. 55) as a result of further careful study to the end of perfecting the classification of instructional personnel, colored as well as white and in order to accomplish fully the determined purpose of the defendants of fairly rating all teachers and principals and of fixing their salaries on the basis of services performed as well as their respective abilities and qualifications; that all teachers and principals, colored as well as white, in the Dade County public school system have been rated and were being and would continue to be rated and paid without respect to race or color solely upon the basis of their respective abilities and qualifications and services performed and rendered pursuant to the schedule as amended.

The case came on for trial on March 4, 1943, and on the following day at the request of plaintiff, it was postponed until June 21, 1943. The trial was resumed on June 23, and June 24, 1943 and at the request of plaintiff was again postponed. As shown by the record (R. 78) the trial was resumed December 6, 1943 and thereafter completed.

The issue tried by the District Judge may be stated as follows: Was the payment by the defendants to white teachers and principals, as a group, of higher salaries than those paid to colored teachers and principals, as a group, at the time of trial occasioned by arbitrary rating and classification, pursuant to a scheme on the part of the defendants to discriminate against the plaintiffs, on account of their race and color?

On March 11, 1944, the District Judge entered final judgment (R. 408) wherein the Court decreed: (1) that the custom, policy and usage now pursued by the defendants in the payment of salaries of teachers and principals does not constitute unlawful discrimination within the inhibition of the equal protection clause of the Fourteenth Amendment to the Constitution; (2) that the salary schedule presently in force is fair on its face and is being uniformly applied by the defendants to the teachers and principals of Dade County without discrimination against the colored teachers and principals; (3) a dismissal of the complaint because the plaintiffs failed to establish the allegations thereof and (4) award costs to the defendants.

The plaintiff took an appeal to the Circuit Court for the Fifth Circuit and on the 23rd day of April, 1945, that Court affirmed the judgment of the District Court (R. 43) which opinion is reported in 148 F. (2d) 754.

The petition for certiorari filed in this cause seeks to have this Court review the judgment of the Circuit Court of Appeals.

ARGUMENT

POINT A.

NO REASON IS SHOWN FOR THE ISSUANCE OF THE WRIT OF CERTIORARI

No effort has been made to set forth any specific reason for the issuance of a writ of certiorari. Instead counsel for petitioner have contented themselves with outlining, generally in nebulous form, some twelve points or statements which are claimed to have been overlooked by the Court.

A mere glance at the recital of these alleged derelictions of the lower courts (Petition pages 11-14) will disclose the utter impossibility of our replying to or discussing them in detail. It is self-evident that an effort so to do would necessarily result in a full brief of the cause. We are convinced that consideration of the detailed findings of the District Judge (R. 403), together with the affirming opinion (R. 425), will constitute a complete refutation of each of these so-called reasons.

As best we can determine, the actual contention advanced for the issuance of the writ is that the lower courts chose to consider that petitioner's prima facie case was rebutted solely by the general assertions of public officials as to the performance of their duties. The prima facie case claimed to have been made by the petitioner was that under the 1940 schedule, unconstitutional on its face, the colored teachers *as a group* were receiving substantially less salaries than were the white teachers *as a group* which difference existed at the time of the protest and at the time of trial.

Thus they contend the lower courts have failed to "understand the case and the evidence, its import and significance" (Pet. p. 13). They assert that the courts erroneously accepted mere generalities as constituting proof on behalf of defendant and thereby indulged in the "violent presumption" [1] that the admittedly lower salaries paid to the group composed of colored teachers did not violate their constitutional rights.

We fully appreciate that a conclusion may appropriately be drawn from the whole mass of evidence which is not always the ascertainment of the kind of fact that precludes consideration by this Honorable Court. And further, that the general rule of concurrence of findings of fact by the lower courts does not always relieve this Court of the task of examining the foundation for findings in a particular case. [2]

With this principle in mind, we will endeavor to ascertain whether the lower courts (1) failed to understand the issues and fundamental question presented or (2) understanding same, they either failed to grasp the nature of the evidence or erroneously accepted "mere generalities" and asservations as constituting proof. [3] In its essence, the overall question then is whether the nature of the material on which the finding was based was such as to warrant the ultimate judgment. [4]

This Court will, we believe, take judicial knowledge that the charges of evil purpose, wrong-doing and outright fraud-

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1. Neal vs. Delaware, 103 U.S. 370, 26 L. Ed. 567
2. Baumgartner vs. U.S., 322 U.S. 665, 88 L. Ed. 1525
3. Norris vs. Alabama, 294 U.S. 598, 79 L. Ed. 1081
4. Baumgartner case supra.

ulent and nefarious conduct set forth in the petition and accompanying brief are not here made for the first time. And further this Court will doubtless recognize it to be a fact that necessarily such has been the policy and trial strategy of opposing counsel from the inception of this litigation.

Thus we assert the courts below would have been unbelievably stupid had they not grasped fully the nature of the case and been zealous to examine the evidence to ascertain any indication of "an evil eye or uneven hand". But we need not rely on assumptions as to whether the courts were derelict in the performance of their duties, as reference to their opinions will disclose beyond any doubt that they had a full understanding of the importance and social significance of the issues presented.

The second question is then for determination. The answer thereto is, we believe, fully and satisfactorily contained in the findings of the District Court and the well considered affirming opinion of the Appellate Court. However, some additional observations may be here helpful.

The basis of the petitioner's claim is that the courts below failing to understand the question, misapplied the evidence and found (1) that petitioner's prima facie case had been overcome and (2) denied petitioner's contention that the fact-that the evidence disclosed that the colored teachers *as a group* were still receiving, at the time of trial, less compensation for their services than *the white group*,—did not of itself constitute a violation of the constitutional rights of the colored group.

This contention was not overlooked by either of the lower courts, but, on the contrary, was fully considered in the light

of all of the evidence. It was rejected by both courts. [5]

Assuming that the 1940 schedule (Plaintiff's Ex. 2), discriminatory on its face, was still in effect at the time this action was filed [6] and admitting that the evidence disclosed that the colored teachers were then receiving less compensation, *as a group,* than the white group, the plaintiff, with the assistance of a presumption, possibly had established a prima facie case. [7]

Had the defendants then not seen fit to go forward with the evidence or had they contented themselves with merely producing testimony limited solely to that of "general asser-

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5. Finding 13 of District Court was: "I find that the evidence as a whole does not warrant the inference that the differential in total compensation is ocasioned by racial discrimination, as the evidence clearly provides a reason for the aforesaid condition, and, in addition thereto, establishes that the classification, and rating given to the teachers and principals of both groups have been the result of conscientious performance by the Rating Committee of an admittedly difficult task". See opinion of Appellate Court, pages 756 and 757: "The new basis of individual classification resulted in the change in the salary of many individuals, both white and colored, though it remained true that as a group the white were rated higher than the colored as a group. * * * The trial judge saw and heard the witnesses testify, and believed them. We do, too".

6. This is indisputably incorrect, as it was abolished on Nov. 5, 1941.

7. This is doubtful. The outcome would turn on the effect and balancing of contrary presumptions, i.e. the continuance of a theretofore existing condition as opposed to the presumption that the Board, as public officials, had honestly performed their duty in effecting classifications of the individual teachers under the new and non-discriminatory schedule in effect when the action was filed. However, for the sake of argument, we are willing to concede the point, same being here immaterial.

tions of the performance of their official duties", possibly the petitioner might have been entitled to a decree of some nature. [8]

It is here to be borne in mind that plaintiff had based his right to a decree not merely upon the prior existence of a policy and custom of discrimination, but of its continuance. The issue was the existence of such policy and custom *as of the time of trial.* Admittedly, the burden rested upon the plaintiff to establish such fact and that burden did not shift but remained throughout the case. But the uncontroverted evidence established that the defendants had, long prior to the filing of the complaint, abolished the old schedule [9] which was the basis of plaintiff's petition and protest and had adopted a new and entirely different schedule. We here observe that throughout the proceedings in both lower courts, the plaintiff never claimed that the new schedule was discriminatory but it stood admitted as fair on its face.

The old policy and custom of compensating teachers—under the 1940 schedule—had ended, whatever it may have been, before this action was filed. The defendants fully and completely, by both written and verbal evidence, disclosed the nature of the new schedule and the machinery set up thereunder for rating and classifying teachers. They disclosed the various amendments which were adopted by the

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8. This is even more doubtful, for reasons that are self-evident.
9. The old (1940) schedule was abolished November 5, 1941 (Def. Ex. 3). The Board of Public Instruction had, however, for many months prior thereto, been working on a salary schedule that would measure the worth of the individual teacher (Def. Exhs. 1, 2 and R. 41). The new schedule was adopted November 26, 1941 (Pl. Exh. 4) and the action was filed on February 17, 1942 (R. 1).

Board to the end of more perfectly measuring the teacher worth and effectiveness of each individual teacher.

Further, the defendants produced three members of the rating committee, whose professional attainments, qualifications and integrity have never been questioned, who outlined step by step the actual process followed by the committee in rating each teacher, white and colored (R. 131-402). Proof was also adduced establishing the classification of all teachers, white and colored, which resulted from the rating (Plaintiffs' Ex. 1). The salary paid to each teacher resulting from the classification under the schedule was established. Defendants' testimony, apart from their voluminous exhibits comprised approximately 288 pages of the printed record.

Defendants' full records reflecting each step taken in the protracted rating process were always available to the plaintiff. In fact his attorney, Mr. Hyde, had checked and inspected the records appertaining to ratings and payment of salaries many months prior to the trial (R. 86).

The defendants, though not required so to do by any rule, voluntarily prepared a compilation, comprising some 67 pages, wherein was set forth all of the results of the ratings. This was delivered to the plaintiff and constituted his Exhibit 1.

All of the records were present in court and available to plaintiff during each of the three different times the cause came on for trial, i.e., March 4, 1943, June 23, 1943, and December 6, 1943. Here we may observe that on each of the first two occasions the trial was halted at the request of the plaintiff.

In addition, plaintiff's counsel had taken the depositions of Supt. Wilson and Mr. Conroy—both members of the rating committee—long prior to trial (Plaintiff's Ex. 3).

Thus it is seen that the plaintiff had every opportunity to fully prepare his case, being advised in detail of the nature of defendant's evidence. He knew both by the testimony of the witnesses, as well as from the records, that the colored teachers *as a group* were still receiving lower salaries than *the white group*. There has never been any contention to the contrary. Plaintiff's counsel well knew, long prior to the final trial date, that the defendants earnestly contended and insisted that this difference in salaries of the two groups resulted solely from the honest and conscientious application of the salary schedule, the bona fide admeasurement of individual teacher worth, white and colored. This was established as a fact not only by the testimony of the witnesses, but likewise by the records themselves, [10] all statements of the opposing counsel to the contrary notwithstanding (R. 274-399, 168, 211, 308, 137-139, 141-142, and Plaintiff's Ex. 1 and Defendant's Exs. 1-13).

Assuredly, when the defendants rested, it was incumbent upon plaintiff, if he were to prevail, to carry the burden resting on him of establishing his case. He made no effort so to do. In fact he introduced not one word of evidence of any nature (R. 403). He was content then, as he has been at all subsequent times, to rely upon charges of bad faith and evil motive of the public officials in whose hands the administration of the schedule had been placed. This, plus the repeated insistence that he was entitled to a decree because it was admitted by the defendants that the white teachers *as*

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10. See Appendix for digest of the evidence supporting the above assertion.

a group were still receiving an overall greater amount in salaries than *the colored group.*

It is here to be importantly noted that no single colored teacher, not even the plaintiff himself, testified that his classification and rating was incorrect or that the salary paid him was less than he was entitled to. Nor is that all in this regard. The schedule specifically provided (Def. Ex. 11, p. 5) the right of appeal of any teacher who was dissatisfied with his or her rating. If requested, the Board was required to promptly make, at its own expense, an examination available to the teacher under stated impartial supervision. The result of this examination would finally determine the salary to be paid. The record disclosed that not one teacher expressed dissatisfaction.

We sincerely believe that the Appendix hereto attached, wherein a brief digest of certain pertinent portions of the evidence is set forth, will fully refute the impression which the petitioner has sought to create—that the colored teachers and principals have been deprived of their constitutional rights by a deliberate and cleverly designed fraud perpetrated by the defendant Board, the Superintendent of Public Instruction and the professional staff upon whom was placed the onerous task of rating each of the approximately 1500 teachers and principals constituting the instructional personnel of Dade County.

POINT B.

THE RECORD COMPLETELY REFUTES THE CONTENTIONS MADE IN PETITIONER'S BRIEF AS TO THE EXISTENCE OF DISCRIMINATION

We here wish to make it clear that at no time during the instant litigation has any contention been advanced or effort made to deprive petitioner, or the class represented by him, of their rights under the equal protection clause of the Fourteenth Amendment. The Board of Public Instruction of Dade County, Supt. Wilson and every official who has participated in the machinery, whereby the salaries paid to the instructional personnel of the aforesaid county have been determined under the new schedule, entered upon and performed their official duties with the sincere conviction that the colored teachers are entitled to have their compensation determined and fixed without discrimination on account of race or color.

It is true that the above statement is a general assertion on our part and one which it may be said would naturally be expected. But notwithstanding this, we feel impelled to challenge the unfounded and vicious—we use the word advisedly—attack here again made upon the character and honesty of purpose of the defendants.

We have made a like assertion—as set forth in the first paragraph above—in each of the courts below and have specifically requested that its complete correctness be checked by the record. We here make the same request with absolute confidence of like result. The utter unsoundness of the attack made upon the defendants is, we believe, definitely

indicated by the fact that petitioner has, by indirection, leveled like charges against the Courts below. [11]

Before proceeding further, we also wish to make it clear that we did not raise the question of the existence, vel non, of an actual controversy in either of the courts below. This, notwithstanding we were fully cognizant of the probable absence of basis for the declaration sought by petitioner as is inferentially pointed out by the Circuit Court of Appeals. [12] We, as counsel, as well as the defendants, have been desirous of a full adjudication as to the merits of the November, 1941 schedule adopted by the Board and subsequently amended, and of the ratings and classifications pursuant thereto. At no time has there been a desire to terminate this litigation through a technical device.

Petitioner contends this Court should assume jurisdiction because the courts below overlooked evidence which established unconstitutional discrimination against the colored

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11. (Pet. Br. 17): "The records are full of coincidences - - - which should have convinced the court. - - All of these the Court either disregarded or simply overlooked". At page 19, after quoting from the opinion, the following statement is made: "That is an inaccurate statement. - - - As a matter of fact, it is contrary to the record". At page 22: "We are amazed that this proposition - - was given any weight by the Circuit Court of Appeals". At pages 22 and 23, after quoting from the opinion, the statement is made, "That is, indeed a strange observation". And see page 24. In the petition (ground i, p. 12), it is said the court "in its decision evidenced only a fragmentary knowledge and understanding of the case". Also see ground j. And it is stated (K- p. 13) that the lower courts "in the face of the record - - - fully indicated their willingness to believe the white witnesses - - in preference to the figures presented by petitioner's evidence".

12. Record, pages 426 and 427.

teachers as a group. In his brief he relies upon the following propositions: (1) the method of rating was unfair to the colored teachers (Br. 7, 8); (2) the item of cultural background on the rating scale favored the whites (Br. 8); (3) that the principals took no part in the rating (Br. 8, 9); (4) the rating committee was all white (Br. 9, 10); (5) that the actual rating of the teachers was a mere sham (Br. 10-23); (6) the additional defenses showed that the defendants were prejudiced against the colored teachers and principals (Br. 23-26).

Items (1) and (2) are in fact a belated claim, here first made, that the new schedule was discriminatory on its face. We submit the schedule itself constitutes a sufficient refutation of these positions (Plaintiff's Ex. 5 and Defendant's Ex. 11). But in addition, the record contains the testimony of three educators (R. 131-133, 205-207, 274-276) that the schedule constituted a sound professional measuring instrument to determine the worth and effectiveness of the individual teacher (R. 129, 144, 236, 237). This testimony was not controverted. Further, the determination of the provisions of the schedule necessitated the defendant Board to exercise its judgment and discretion. Courts will refuse to substitute their judgment for that of officials entrusted by the law with its execution. State of Louisiana vs. McAdoo, 234 U.S. 627, 34 S. Ct. 929, 58 L. Ed. 1506.

Items (3) and (4) are a claim that the lower courts erroneously approved discriminatory machinery for the application of the schedule. But here again no evidence whatsoever was brought forward by petitioner. When analyzed these propositions amount to a mere contention that possibly a different result might have eventuated had principals and colored teachers served as members of the rating committee. Why such result would have been occasioned is not disclosed

by the evidence. In its essence petitioner's contention is that the Federal Court should have taken over the modus operandi of the rating process but it is settled that any interference on the part of the Federal authorities with the management of schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land. Cumming vs. County Board of Education, 175 U.S. 528, 44 L. Ed. 262.

In item (5) it is claimed that the record should have convinced the courts below "that the defendants were simply going through motions of rating and grading to give a superficial appearance of compliance with constitutional mandates, while actually meaning to, and actually defeating them" (Pet. Br. 17).

This is a direct charge that the defendants deliberately and designedly violated the high trust imposed upon them in the performance of their official duties.

Assuming the testimony of these officials, as to the sincerity of their purpose in effectuating the schedule, (R. 134, 135, 143, 165, 207, 221, 281, 282, 288, 308) amounts, as petitioner argues, to mere general assertions of their per-

formance of duty, are the findings of the lower courts on this point erroneous? [13]

As petitioner claimed the defendants, in the administration of the schedule, deliberately discriminated against the colored group, it was incumbent upon him to show "how or by what means" this was accomplished. Williams vs. State of Miss., 170 U.S. 213, 42 L. Ed. 1012. No effort was made by petitioner so to do. The good faith and integrity of purpose of both the Board and rating committee stand uncontroverted in the record. But opposing counsel, here as in the courts below, level charges of evil purpose and outright dishonest conduct against these officials. The nature of the charges made is such that, if they be true, then, necessarily Board Member Terry and the members of the rating committee were guilty of perjury in their testimony.

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13. The District Judge found:

"8. The said Rating Committee appears to the Court to have been reasonably competent and qualified, from a professional standpoint, to perform their duties as outlined and provided in the salary schedule, and it is further found as a fact that the Committee did approach their task in a conscientious and professional manner". (R. 405)

"11. I further find from the evidence that prior to the trial of this cause, each teacher and principal, both white and negro, was classified and rated and that this was done conscientiously on the basis of determining teacher value and worth under the terms of the schedule upon a written rating sheet, and without consideration to race or color of any teacher or principal, and that salaries are now being determined and paid on the classification and rating so done". (R. 405, 406).

"13. * * * the evidence clearly * * * establishes that the classification and rating given to teachers and principals have been the result of conscientious performance by the Rating Committee of an admittedly difficult task". (R. 406)

The Appellate Court said: "The Trial Judge saw and heard the witnesses testify, and believed them. We do, too".

However, no word of testimony was brought forward to sustain this imputation of perjury of defendants' witnesses. Under such circumstances, the complaint was for dismissal. Coulter vs. L. & N. R. Co., 196 U.S. 599, 49 L. Ed. 615.

But defendants' proof, in refutation of the claimed discriminatory policy and usage, did not rest merely upon verbal evidence, as petitioner would have this Court believe. The good faith application of the schedule is established by the results (R. 167, 168, 237, 238) and other strong corroborating evidence. [14] The assertions made by petitioner to the effect that no changes resulted from the application of the schedule are grossly inaccurate (R. 292-295, 312-324, 333, 342-346). The courts below had before them the full statistical data and compilations. Both courts disapproved the identical contentions here made by petitioner, as to the results of the application of the schedule. It is true that, on an average and *as a group*, the colored teachers were not receiving as high salaries as *the white group* at either the time of filing the suit or at the time of trial. This admitted fact is greatly stressed by petitioner as indicating, indeed necessitating, a finding of unconstitutional discrimination. The trial court found:

> "Although a compilation of the total salaries paid to the two groups shows that the overall salaries paid to the white group still exceeded the total of the salaries paid to the group composed of negro teachers and principals, I find that the evidence as a whole does not warrant the inference that the differential in total compensation is occasioned by racial discrimination, as the evidence clearly provides a reason for the aforesaid condition, and, in addition thereto, establishes that the classification and rating given to teachers and principals of both groups have been the result of conscientious perform-

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14. See Appendix hereto attached.

ance by the Rating Committee of an admittedly difficult task". (R. 406)

The Circuit Court of Appeals approved this finding. The testimony, not mere generalities, of many witnesses established the reasons for this continued disparity in salary levels (R. 136-139, 211, 308, 310). The soundness of these reasons was not challenged.

The Appellate Court pointed to evidence which strongly corroborated the fact that the difference in salary levels resulted only from a fair administration of the schedule, to-wit, that although the schedule provided the right of appeal to any teacher dissatisfied with his rating "not a single appeal to this disinterested arbiter has been taken". The impact of this fact upon petitioner's claim appears in Dent vs. St. of W. Va., 129 U.S. 114, 32 L. Ed. 623.

The claim is made by petitioner that the members of the rating committee were unfitted for their task by reason of racial prejudice. It is argued that this prejudice was evidenced by their professional opinion that the colored teachers *as a group* were not possessed of the same degree of teacher worth and value to the system as the white group. Indeed appellants go further and charge that the members of the committee approached the performance of their duties in bad faith, with the purpose in mind of effecting discrimination against the colored teachers *as a group.*

The fallacy of this contention is at once apparent. The members of the committee testified that in their professional opinion white teachers in Dade County, Florida, as a group were and still are, to a more limited extent, possessed of qualities which occasion them to be more effective in the classroom and consequently of greater value to the school system.

They narrated in detail the basis for their opinion (R. 136-139, 168, 211, 308 and 310). Not one word of testimony was adduced to the contrary. Thus the basis of their opinion is established as a fact, insofar as this case is concerned.

Can it be soundly argued that the realization and acceptance of a fact constitute prejudice?

Even if the individual members of the rating committee held mistaken opinions as to the respective values of the two groups, would their erroneous view preclude them from fairly and capably evaluating the respective abilities of the individual teachers in accordance with the explicit provisions of the schedule? Their task was not to measure or evaluate the groups but only to rate each teacher on specific factors.

At this point we demonstrate that Appendices II and III attached to the brief of petitioner are of no value in determining the question of discrimination:

Plaintiff's Appendix II, which includes the school year 1941-1942 only, is of no value in determining whether the schedule, as amended, has been properly applied because:

(1) The white teachers were under contract for the school 1941-1942, and this made it impossible to place the schedule into effect as to white teachers during that school year in cases where it would result in reducing salaries.. The resolution of the Board that no salaries be reduced in 1941-1942 (Defendants' Exhibit II) afforded the same treatment to colored teachers as was afforded to white teachers by their contract, i.e., no salaries of white or colored teachers could be reduced in the school year 1941-1942. So, it is apparent that the payment of salaries under the salary schedule could not be placed in effect during the school year 1941-1942

in all cases where it would result in reducing salaries, and could not become effective until the school year 1942-1943.

(2) Petitioner's Exhibit I shows 970 white degree teachers while petitioner's Appendix II shows only 805 white degree teachers or a loss of 165 teachers. Did these teachers resign rather than accept a reduction in salary or would their names if placed on Appendix II show facts that petitioner does not want to show to the Court?

Attention is directed to the fact that at the beginning of the school year 1942-1943 the salary schedule was placed in effect and salaries paid thereunder according to the ratings received by each teacher.

Plaintiffs' Appendix III does not reveal the actual operation and effect of the application of the salary schedule for (1) it does not give the correct amount of salary received by each teacher for the school year 1943-1944, as shown on Plaintiffs' Exhibit I; (2) except as to a few teachers, no reference is made to the rating received by each teacher. The salary of a teacher is determined by: (a) her rating, which places her in one of four classifications, i.e. "fair", "good", "very good" and "excellent". Each classification has a salary range as follows:

	Minimum	Maximum
Fair	720	1080
Good	1080	1260
Very Good	1260	1800
Excellent	1800	2040

(b) whether she had a Master's Degree or taught library, physical education, etc., (c) her years of service, except that at the beginning of the school year 1942-1943 all first year teachers for 1941-1942 and all first year teachers for 1942-

1943 were treated as first year teachers and rated and paid accordingly. For 1943-1944 all first year teachers were rated as such and paid accordingly; (3) it does not tell the story about a number of white teachers who resigned in 1942-1943 rather than accept a rating that resulted in a decrease in salary. It does not show the large number of white teachers, (other than beginners) and the small number of negro teachers who resigned in the school years 1942-1943 and 1943-1944 after the schedule, as amended, became effective. The appendix only shows some of the white and colored teachers who remained in the system and makes no mention of those who resigned; and (4) Petitioner's Exhibit I shows 970 white degree teachers and 154 colored degree teachers. Petitioner's Appendix III, however, shows 555 white degree teachers and 114 colored degree teachers or a loss of 415 white and 40 colored degree teachers. The question naturally arises: why are these teachers not shown? Without this information the appendix cannot give a complete picture of the application of the salary schedule as amended.

Under Item (6) the petitioner claims the additional defenses showed that the defendants were prejudiced against the colored teachers and principals.

Petitioner's counsel express amazement at the following statement of the Circuit Court of Appeals with reference to these defenses:

> "These defenses were not tried out. No evidence was offered to support them. The evidence is that no defenses were in fact made for any such reason; and that indeed there was an oversupply of white teachers".

They state that both courts below failed to use common sense in that the decree entered and approved was not affected by the additional defenses which they say "plainly

indicated - - that even before rating the defendants intended to have the result of that rating show a substantial differential in salaries in favor of the whites".

This well typifies the mental processes of petitioner's counsel through the long period of this litigation. To our minds, it clearly shows where lies the only prejudice in this cause.

Certainly the fact of defendants having interposed inconsistent defenses could not assist the plaintiff to maintain the burden of proof. Nor could the allegations contained in said defenses affect the only reason advanced by petitioner for the issuance of a writ, i.e., that the courts below "chose to consider that this (plaintiff's) prima facie case was rebutted solely by the general assertions of public officials of conscientious and non-discriminatory performance of their duties" (Pet. 11).

Petitioner claims that while the additional defenses *were not tried* "that the sole—or at least the paramount—thought in their minds (defendants) was: the whites must be paid substantially more than the blacks".

The obvious answer, of course, is that the additional defenses were not tried and that the testimony on behalf of defendants disapproved said defenses.

The petitioner confuses the alleged evil intention of the defendants with the result of the work of the rating committee. Even if it is assumed that the evidence established that the Board actually intended to arrive at the result of paying white teachers more than colored teachers, such would not suffice for there must be discrimination in fact. Thomas vs. State of Texas, 212 U.S. 278, 53 L. Ed 517. The record

establishes that the Board adopted a schedule which was fair on its face. Further the evidence is conclusive to the effect that the Board did not influence the rating under the schedule but that this work was performed solely by the rating committee.

Thus the intention of the Board can be of no consequence for the rating was done by the rating committee composed of highly trained professional people who performed their task fairly and uniformly and without favor to white or colored teachers (R. 165, 167, 174, 181, 182, 236, 271).

CONCLUSION

No contention has ever been made by defendants that the ratings and resultant classifications under the new schedule, were free from errors, or that there existed no inequalities in the salaries paid. Such admittedly was not the case and unquestionably there were inaccuracies and instances of individual discriminations. Such in fact was the testimony (R. 174, 201, 227).

However, we do most earnestly insist that such inequalities as may actually have existed—no individual instance is disclosed by the record—are no more numerous among the group composed of colored teachers than among the white group. Such inaccuracies resulted from mere human errors by the rating committee (R. 391) honestly committed, and would not have supported petitioner's claim of discrimination even had they been established. Sunday Lake Iron Co. vs. Township of Wakefield, 247 U.S. 350, 62 L. Ed. 1154, 1156, Smith vs. Witherow, 102 F. (2d) 638, 642 (3rd CCA) and cases cited.

It was established as an uncontroverted fact that the rating committee considered every teacher individually and uniformly set the salary schedule to work (R. 167, 174, 236, 271). The rating was done uniformly (R. 181, 182). Such lack of abstract symmetry as may have existed, therefore, does not matter. Patsone vs. Commonwealth of Penn., 232 U.S. 138, 58 L. Ed. 539, 543.

The testimony (R. 201) as well as the official steps taken by the Board in an effort to perfect the schedule, demonstrate that it has been the purpose of the defendants to perfect a system which would scientifically measure the teacher worth of every individual teacher without regard to race or color. The record conclusively shows that it has been and is the policy of the Board to apply the new schedule to all teachers alike, white and colored, and to rectify any inequalities that may exist. The Board has made a diligent and, we believe, successful effort to that end. The answer to petitioner's contentions is that the law requires no more. Buck vs. Bell, 274 U.S. 200, 71 L. Ed. 1000, 1002 and Wakefield case supra.

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in this Court, and that the petition for a writ of certiorari should be denied.

Dated September 5, 1945.

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APPENDIX

DIGEST OF THE EVIDENCE

According to the record, plaintiff's evidence consists of the following:

(a) A list of teachers and information as to their training, years of service, salaries and ratings for the school years 1941-1942, 1942-1943, 1943-1944. While not required to do so, the defendants prepared and furnished this list to the plaintiff and it will be found in the record as Plaintiff's Exhibit 1.

(b) A photostatic copy of the petition of the Dade County Negro Teachers Association protesting the salaries paid to colored teachers.

(c) Depositions of James T. Wilson and Dan Conroy.

(d) A certified copy of the salary schedule adopted December 11, 1940.

(e) A report to the Board of Public Instruction by Superintendent Wilson concerning the proposed new schedule dated November 26, 1941.

(f) A certified copy of the salary schedule adopted by the Board on November 26, 1941.

(g) A certified copy of the schedule adopted by the Board on November 26, 1941, as amended April 29, 1942.

The record shows that the plaintiff did not produce a single witness at the trial of the case either to sustain his position or to rebut the evidence offered by the defendants.

The evidence produced by the defendants consisted of:

(1) Certified copies of excerpts of the minutes of the Board of Public Instruction and a certified copy of the salary schedule of November 26, 1941, as amended April 29, 1942 and July 21, 1943, and the forms and definitions used by the rating committee in rating each teacher and

(2) The testimony of the following witnesses:

R. P. Terry: Mr. Terry has been a member of the School Board since 1937, a former school teacher and principal and a former member of the State Board of Control, which latter Board has control of our state institutions of higher learning. He is a lawyer and had practiced in Dade County for the past twenty-one years. He had devoted a great deal of time to improving the salary schedules in use in the county and had for years felt that the 1940 schedule did not recognize sufficiently individual capabilities and had sought to have adopted and put in force a schedule that would measure individual teacher effectiveness and pay the teachers accordingly (R. 110).

James T. Wilson: Became County Superintendent of Dade County in 1937 and as County Superintendent he is the executive head of the school system of Dade County. He holds an A. B. and M. A. degree and has had wide experience as a teacher, principal and administrator and in evaluating the work and ability of teachers. He is an active member of the National Education Association and Florida Education Association and is past president of the Florida Education Association (R. 205-207).

I. T. Pearson: Holds degrees of A. B. and M. A., and for many years was a teacher and principal in Georgia, Louisiana

and Florida. From 1925 to 1938, he was Supervisor of Teachers, both white and negro, in Dade County and since 1938, he has been Director of Instruction of white and negro teachers in Dade County. For many years, he was a member of the State Grading Committee for grading teachers who sought to obtain teachers' certificates. He is an active member of the National Education Association and of the Florida Education Association. Since 1925 he has been actively interested in and a particular friend of the cause of negro education (R. 131-133).

Dan Conroy, Jr.: Is Supervisor of Negro Education in Dade County, which position he had held three years. Among his duties is that of the direct supervision of the Negro Instructional Personnel in the county. He spends much of his time with them in the classroom. He holds the degrees of A. B. and M. A.; has taught in junior and senior high schools; has had wide experience in statistics and in school transportation; was a member of and participated in the work of the Southern Works Conference at which was made a study of salary schedules designed to recognize the individual worth of teachers; is an active member of the National Education Association and the Florida Education Association and for many years has been actively interested in and is a warm friend of the cause of negro education (R. 274-276).

It clearly appears from the record that the action of the Board of Public Instruction in the adoption of the schedule of November 26, 1941, which was designed to measure the teacher worth of the individual teachers rather than to determine the worth of teachers as groups, was not occasioned by the action of the colored teachers in filing their protest with the Board on November 4, 1941. It is true that the protest was filed on November 4, 1941, and on the following day the Board adopted a resolution abolishing the schedule

of 1940 and it is further true that on November 26, 1941, the Board adopted the new schedule.

The evidence, however, clearly showed that the Board had been for many months working on the matter of adopting a schedule which would measure the worth of the individual teacher, as will appear from the following:

(1) In March, 1941, Mr. Terry, a member of the Board, made a trip to Tampa to attend a meeting of educators where the subject of Salary Schedules Measuring the Worth of the Individual Teachers was discussed. He returned and made a report of his findings to the Board and this information was used by the Board in its efforts to obtain such a schedule (R. 111-114). Mr. Terry testified that for a long time prior to the date upon which he made the trip to Tampa, he had felt that the 1940 schedule should be abolished because it did not recognize the worth of the individual teacher and that he had given a great deal of thought and effort to the matter of developing a schedule that would measure the worth of the individual teacher.

2. On May 14, 1941, an official resolution was passed by the Board requesting the Superintendent to secure and use the Morrison Rating Scale Profiles for Teachers and ascertain if that form of rating had any value.

3. On September 5, 1941, a resolution was adopted to the effect that it is determined advisable to revise the salary schedule as applied to teachers, with the thought that they should be paid in line with their teaching ability and instructing the Superintendent to take the necessary steps to give tests to all teachers, etc. (Defendant's Exhibit 2).

4. On November 5, 1941, a motion was unanimously adopted by the Board abolishing the then present (1940) salary schedule and that as promptly as possible a schedule be formulated on the basis of teaching ability (Defendant's Exhibit 3).

5. On November 26, 1941, the new schedule was adopted (Plaintiff's Exhibit 4).

6. Supt. Wilson's testimony that this schedule was the result of work he and his assistants had been engaged in for many years prior thereto was not challenged (R. 215). The detail of this work is fully disclosed in the record (pp. 213, 214).

7. At no time during the trial, or indeed to this point, has it been contended that the November, 1941 schedule was discriminatory or unfair on its face. We take the statement made in petitioner's brief (top p. 17) as a left-handed admission to like effect. At any rate, study thereof will convince the Court that the District Judge correctly found it fair on its face. Plaintiff's Exhibit 4. The schedule of November 1941 was amended April 29, 1942 and July 21, 1943. Plaintiff's Exhibit 5, Defendant's Exhibit 11.)

The schedule adopted November 26, 1941, required that all teachers be rated in one of three classifications: Good, Very Good and Excellent (Plaintiff's Exhibit 4, p. 10). These classifications were found inadequate and on April 29, 1942, the Board amended the salary schedule in several respects, including that of adding a fourth classification of "Fair". These four classifications remained the same at the time of the trial on December 6, 1943 (Defendant's Exhibit 11, p. 4).

The November, 1941 schedule provided that "The rating of teachers shall be a subjective and an objective rating by principals, supervisor of personnel, director of instruction, assistant director of instruction and the superintendent".

In the amendment to the schedule of April 29, 1942, this provision was changed by adding thereto Supervisors (Plaintiff's Exhibits 4 and 5, p. 10 and 10 respectively). On July 21, 1943, the sohedule was further amended and the wording of this provision was changed to make it conform to the practice that had been followed by the Board since the appointment of the rating Committee soon after the adoption of the schedule in November, 1941. This committee was composed of: James T. Wilson, Superintendent of Public Instruction (an elected official), I. T. Pearson, Director of Instruction, Miss Alice M. Kahl, Supervisor of Personnel, Miss Gertrude Shaffner, Assistant Director of Instruction, and Dan J. Conroy, Jr., Supervisor of Negro Education (Defendant's Exhibit 11 and 4, p. 4 and 2 respectively). The members of the committee served from November, 1941, to the time of the trial, December 6, 1943.

The plaintiff for the first time now objects to the personnel of the rating committee and says that it was unfair and discriminatory because a colored person did not serve thereon. Attention is directed to the following facts: (1) The objection comes too late — it should have been made before or at the trial; (2) there is no evidence that any colored teacher or principal was qualified to serve on the committee; (3) the committee is composed of supervisors and the evidence does not show that there is a negro supervisor in Dade County and (4) there is no evidence to show that the petitioner or those whom he represents suffered any injury by reason of the fact that no colored teacher or principal served on the committee.

It was found that teachers could not be adequately rated under the November, 1941 schedule because: (a) inadequate or no provision was made for rating (1) beginning teachers, (2) teachers with experience who had not taught in Dade County, (3) non-degree teachers and principals; (b) no provision was made for determining the salary of a teacher when she passed from a classification to a higher one, and (c) some teachers, white and colored could not be rated Good. The amendment of April 29, 1942, corrected these errors. There were some amendments adopted July 21, 1943, but they were primarily of a clarifying nature (Pl. Exh. 5, pages 10-13 and Def. Exh. 11, pages 3-6).

The rating committee proceeded with its labors as follows:

It soon discovered that it could not adequately rate the teachers under the November, 1941 schedule as above pointed out, but it did assign a rating to each teacher (R. 281-282). After the adoption by the Board of the amendments of April 29, 1942, and before the end of the school year, [1] the committee did rate each teacher (R. 284).

No salaries could be reduced by virtue of the ratings made during the school year 1941-42 because the Board adopted a policy forbidding such reduction. If the ratings had been completely applied during that time, some salaries would have been reduced.

In rating the teachers prior to the end of the 1941-42 school year, the committee did not use any forms prepared for this purpose, nor did it have before it any written definition of the items under the four factors upon which they rated the teachers.

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1. The school year is from July 1 to June 30.

The committee was not satisfied with its work so in the summer of 1942 it determined that it should adopt and use a rating form for each teacher and acordingly it adopted such forms (Defendant's Exhibits 5-9). These forms broke down the four factors upon which teachers were to be rated into several items. Written definitions of each item were also adopted (R. 149, 289).

In September and October, 1942, the rating committee re-rated each teacher. The committee held many meetings and had before it and used in its deliberation, the file of each teacher in the Superintendent's office, including the "Principal's Report of Teacher's Efficiency" card or success card, the rating forms and definitions and the information on each teacher possessed by the members of the committee. The committee members were, except the Superintendent, Supervisors and had long been in the system and some if not all, members knew each teacher and had observed her teaching. If adequate information was not available, then some member of the committee would discuss the teacher with her principal (R. 282, 287, 289). The rating of each teacher was then uniformly done without regard to race or color (R. 166, 167, 228, 287).

It thus appears that the first comprehensive rating was done in September and October, 1942, and the results first applied for the school year 1942-1943. The validity of the schedule, *designed to determine the teacher worth of the individual teachers* as distinguished from the teacher worth of any group, should logically be judged by the results of the rating. [1]

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1. The rating received by each teacher and the salary paid pursuant thereto appear in columns 9, 10, and 11, Plaintiff's Exhibit 1.

The rating process is a continuous one for when a teacher reaches the maximum salary in her classification, she must be re-rated.

The rating committee had nothing to do with fixing salaries, its duties being solely that of rating (R. 166).

The results of the several ratings are found on Plaintiffs' Exhibit 1.

There are some explanations attached to this exhibit but we add the following:

(1) The classifications and salaries in the schedule of November, 1941, and as amended are: (Plaintiffs' Exh. 4 and 5)

1941 Schedule

Classification	Minimum Salary	Maximum Salary
Good	720	1260
Very Good	1260	1800
Excellent	1800	2040

1941 Schedule as Amended April 29, 1942 and July 21, 1943

Classification	Minimum Salary	Maximum Salary
Fair	720	1080
Good	1080	1260
Very Good	1260	1800
Excellent	1800	2040

(2) When the salary schedule was placed in effect for the school year 1942-1943, all first year teachers of 1941-1942 were given the same placement test as the first year teachers of 1942-1943. All these teachers were rated and

placed on the salary schedule in accordance with its provisions except that all first year teachers of 1941-1942 were given the benefit of one year of service and received the $60 annual increase (R. 316 and all of Defendants' Exhibit 8 and column 10 of Defendants' Exhibit 1).

(3) Each teacher was entitled to an annual increase in salary of $60, until she reached the maximum salary in her classification. This annual increase was given to the teachers at the end of the school year until the school year 1943-1944 and up to that time was not a part of the contract salary, but since then it has been a part of the contract salary and this fact is reflected in the salaries shown on Plaintiffs' Exhibit 1.

(4) When a teacher reached the maximum salary of her classification, she was re-rated. The result of the re-rating placed her in a higher or lower classification or left her in her present classification and she was paid accordingly for the next school year.

We now examine the results in dollars and cents of the several ratings as shown by Plaintiffs' Exhibit 1.

The petitioner claims that the Board discriminated against the colored teachers, as a group, in the compensation paid them under the 1940 schedule and that this discrimination continued under the first rating made under the 1941 schedule and under the ratings which were made after the adoption of the April 29, 1942 amendment and during the school year 1941-1942 and at the time of the trial (R. 86-96). By inference the same claim is made as to the third ratings (summer and fall, 1942). Petitioner claims that under the 1940 schedule, and all subsequent schedules and amendments, the difference in salaries of white and colored teachers was maintained on the basis of a lower beginning salary for colored

teachers and that this difference continued from year to year with the addition of the annual automatic increase. Petitioner claims the salaries to be:

Years of Service	White Salaries	Colored Salaries
1	1020	720
2	1020	720
3	1080	780
4	1140	840
5	1200	900
6	1260	960
7	1320	1020
8	1380	1080
9	1440	1140
10	1500	1200 (R. 91)

Petitioner also claims that this condition continues with the years until the maximum was reached.

Let us examine the record under the *first rating* done under the *schedule as amended April 29, 1942*, and look at some examples where the salaries of white and colored teachers did not follow years of service (R. 314):

Years of Service	White Salary Paid	White Salaries Claimed by Petitioner	Colored Salary Paid	Colored Salaries Claimed by Petitioner
1	1080	1020		
10	1080	1500		
3		1080	1140	780
5		1200	1260	900
7		1320	1320	1020
8		1380	1380	1080
10	(1080 (1260	1500 (R. 292)		
15			1740	1400
16			1740	1560

Under the same ratings, we find 13 white teachers with 6 *years* of experience rated Good and 9 white teachers with

6 *years* of experience rated Very Good. The above group of teachers with the rating of Good actually received $1260 per year, that being the maximum payable under the rating of Good, and the above group of teachers with a rating of Very Good actually received $1800 per year, that being the maximum payable in their classification, but if appellants' contention be correct, then both groups necessarily would have received $1260 per year. Why? Because according to appellants, the classifications of Fair, Good, Very Good and Excellent in the schedules were merely subterfuges used for the purpose of paying white teachers higher salaries than negro teachers and they say that the salaries paid were the result of beginning all white teachers at $1020 per year and increasing each white teacher $60 per year thereafter (R. 85-94, 312).

We also cite the case of 12 first year white teachers known as cadets, whose salary was $730 per year and not $1020 as claimed by plaintiffs. There were also 18 first year permanent substitute teachers drawing $900 per year instead of $1020 as claimed by Plaintiffs (R. 333).

Next we take some examples of the results of the *second rating* under the November, 1941 schedule as amended April, 1942. These salaries were for the *school year 1942-1943*. The results appear in columns 9, 10 and 11 of Plaintiffs' Exhibit 1:

There are both white and colored teachers in the Good classification (salary $1080 to $1260) with experience from *1 to 15* or more years. There are two white teachers with 1 year of experience rated Good and 4 white teachers with 15 years of experience rated Good (R. 324). There are many colored teachers with from 3 to 14 years of experience rated Good (R. 326). To illustrate further that the salaries of

colored teachers do not follow the pattern as claimed by petitioner, i.e. years of service (R. 316-320):

Years of Service	Colored Salaries Actually Paid	Pattern which petitioner claims had been followed in payment of colored salaries
1	780 - 960	720
2	780 - 900	720
3	840 - 1140	780
4	1140 - 1260	840
6	960 - 1200	960
7	1260	1020
8	1260 - 1280	1080
9	1140 - 1440	1140
10	1320 - 1500	1200
11	1260 -	1260
12	1140 - 1620	1320
13	1680	1380
14	1320 - 1740	1440
15	1140	1500
16	1260 - 1800	1560

Further illustrative of variation of salaries from years of service, we quote from the testimony of Mr. Conroy (R. 292-295):

> "This tabulation indicates that more and more as you go into the application of this rating process the salaries paid and the number of years' experience of the teacher became more and more completely divorced. They have no apparent relationship in many, many, instances. * * It all depends entirely upon the rating classification that teacher fell into, that various teachers fell into. That is even more apparent for the school year 1942-1943. For example, an analysis of the salaries paid to white and colored teachers that received a rating of Good we find there were two white teachers with one year of experience who received a salary of $1080. There were no colored teachers in a similar classification.

"There were five white teachers that had two years of experience who received a salary of $1080. There were no colored teachers in that particular classification.

"We find thirty-six white teachers with three years of experience who received $1140.

"I could continue to state the whole thing year after year.

"We note that even many teachers with fifteen years or more of experience—we have white teachers receiving $1260, which was the maximum that they could be paid with a rating of Good. Those teachers had that rating.

"We had colored teachers also with a corresponding number of years of experience receiving the same salary of $1260.

"We find, taking another year for example, say the tenth year, we find white teachers with ten years of service with a rating of Very Good who are receiving $1500 a year.

"We find colored teachers with ten years of experience receiving a rating or a salary of $1500. Colored and white alike were rated and all Very Good with ten years of service or experience received the salary prescribed by the schedule.

"We find teachers with one year of experience, for example, in the Fair bracket rated only Fair, white teachers, receiving a salary which varied from $960 through to $1020 to $1080. They were teachers who had been given our examination for beginning teachers and who were rated and ranked accordingly and placed on the salary schedule according to their rank. We find colored teachers in exactly the same situation.

"To illustrate what was done with the beginning teachers, for example, it is very interesting to take the teach-

ers who were employed for the first time this year. They were given an examination and they were rated by the rating committee using the results of that examination.

"White and colored teachers were together given the same test under identically the same conditions. We had a broad beginning salary basis there. It began really anywhere from $720 to $1080.

"New teachers without experience can get anywhere between those two figures, depending on how the teacher is ranked in competition with all the other beginning teachers and it so happens that the figure from $720 to $1080 is readily broken down into eight steps of $60 each so that our teachers with the highest rank, the rank of one, we may pay a salary of $1080.

"Teachers with the rank of two received $1020, and so down to the rank of eight received $720.

"We find, this year, for example, beginning teachers receiving a salary all the way down $780 to $1080.

"None of the beginning teachers this year ranked low enough to receive the minimum salary of $720.

"The teachers who ranked highest were all white teachers. There were six of them out of eighteen white teachers and eleven colored teachers. Those of them who ranked one were given a rating by the committee of Good and the minimum salary of Good classification is $1080 a year.

"Now, the teachers who ranked second—there were seven white teachers and two colored teachers; those teachers were ranked Fair and they were given the maximum salary of the Fair classification, $1080. There were seven white and two colored.

"The teachers who ranked third—there were one white teacher and one colored teacher; those two were given

a rating of Fair for the third rank and were given identical salaries of $1020.

"Down in the fifth rank we find no white teachers from that point on down. Our white teachers did better on the examination as a group than the colored teachers, but, although there were individual negroes who did as well as many white teachers, we find eight colored teachers below that fifth rank.

"Taking this analysis as a whole we find that of the eighteen white teachers seventy-two per cent of them ranked in the upper quartile.

"Two of the eleven colored teachers or eighteen per cent ranked in the upper quartile.

"Twenty-eight per cent of the white teachers ranked in the second quartile with none falling any lower than that.

"One colored teacher or approximately nine per cent ranked in the second quartile, with six of the eleven teachers—colored—of fifty-five per cent, ranked in the middle half of this group—average beginning teachers, you might call them.

"None of the white teachers ranged in the lower quartile and twenty-seven per cent of the colored teachers fell in the lower quartile".

There were white and colored teachers with from 3 to 14 years of service rated Good.

There was a group of white and colored teachers that did not receive the $60.00 annual increase because they had reached the maximum of their respective classifications (R. 326-327).

Mr. Conroy gave the following examples (R. 326-327):

One white teacher 2 years rated Fair $1080.

One white teacher 6 years rated Good $1260.

One white teacher 13 years rated Good $1260.

One white teacher 10 years rated Good $1260.

One white teacher 15 years rated Good $1260.

One white teacher 25 years rated Fair $1080.

One colored teacher 8 years rated Good $1260.

One colored teacher 9 years rated Fair $1080.

One colored teacher 16 years rated Fair $1080.

One colored teacher 18 years rated Good $1360.

($100.00 additional salary above maximum of $1260 in Good classification, paid for Master's Degree).

These teachers cannot receive the $60.00 annual increase until they have improved in their teaching sufficiently to obtain a higher rating. When a teacher reaches the maximum in a classification, she is re-rated and if she has improved sufficiently, she is placed in a higher classification and if not, she remains in her present classification or is placed in a lower one. As long as she remains at the maximum of a classification she is re-rated each year (R. 328 and pages 10 and 11, Plaintiffs' Exhibit 5).

It will be noted that there appears on Plaintiffs' Exhibit 1, after the names of some teachers, the word "Resigned". Usually this indicates that the teacher resigned rather than

accept the reduction in salary or rather than take an examination (R. 331). As further evidence of the application of the schedule, we find:

Sixteen first year (had taught one year and would have been second year teachers if they had remained in system for 1942-1943) *white* teachers resigned when ratings placed them in a lower classification and would have reduced their salaries. There were *22* other (1st, 2nd, 3rd and 4th year) *white teachers* that refused to take the required examination for ratings because of the possibility of there being a reduction in salary. There were *12* other *white teachers* with longer years of service who resigned rather than accept a reduction in salary. They were rated Good or Very Good in the first rating under schedule as amended April 29, 1942, but their ratings were reduced to Good or Fair under the second ratings, which took place in the late summer and fall of 1942 for the school year 1942-1943 (R. 331-332).

Some white and colored second year teachers took the beginning teachers examination (Defendants' Exhibit 8) and were ranked and placed on the salary schedule accordingly. The salary received by these white teachers was $900 to $1020 and the salary received by the colored teachers was $780 to $960. The salary range on the schedule was $720 to $1080 (R. 335). The following are examples of variations in years of service and salaries of white and colored teachers showing ratings (R. 326-327):

White	Colored	Years of Service	Rating	Salary Paid
1		2	Fair	1080
1		6	Good	1260
1		10	Good	1260
1		13	Good	1260
1		15	Good	1260

White	Colored	Years of Service	Rating	Salary Paid
1		26	Fair	1080
	1	8	Good	1260
	1	9	Fair	1080
	1	16	Fair	1080
	1	18	Good	1360*

*Maximum salary under Good $1260. An additional $100 for Master's Degree.

We pass now to examples of the results of the application of the salary schedule of November 26, 1941, as amended April 29, 1942, and July 21, 1943, for the school year 1943-1944. The detail of the results appear in columns 12, 13 and 14 of Plaintiffs' Exhibit 1. By the beginning of the school year 1943-1944, the rating committee and the finance department had acquired sufficient experience with the application of the schedule to eliminate most of the errors and to actually make a complete application thereof, which was done. The fact that it took more than a year to accomplish this result is explained by the fact that rating was new and that there were approximately 1500 teachers and principals to rate and the finance department had to develop a technique for paying them under the ratings. So the ratings and salaries paid for the school year 1943-1944 actually reflect the first comprehensive picture of the application of the salary schedule of November, 1941 as amended.

Further demonstrating that the pattern, as contended for by the petitioner, was not followed, we find white and colored teachers with from one to fifteen years of experience rated Good and receiving the maximum salary of $1260. (R. 324)

Further illustrations that the salaries do not follow years of service (R. 320-323):

NEGRO TEACHERS

	Salary claimed by Petitioner to be paid
5 with 1 year experience salaries from $780 to $1080	$ 720
5 with 2 years experience salaries from $840 to $1020	720
5 with 3 years experience salaries from $840 to $1200	780
2 with 4 years experience salaries $1260	840
2 with 5 years experience salaries $1260	900
3 with 8 years experience salaries from $1140 to $1320	1080
2 with 9 years experience salaries from $1140 to $1560	1140
2 with 11 years experience salaries from $1260 to $1680	1260
3 with 13 years experience salaries from $1140 to $1800	1380

WHITE TEACHERS

	Salary claimed by Petitioner to be paid
1 with 2 years experience salaries $1080	1020 (R.326)
3 with 6 years experience salaries $1260	1260
4 with 7 yrs. exper. salaries from $1260 to $1320	1320
2 with 8 yrs. exper. salaries from $1260 to $1320	1380
2 with 11 yrs. exper. salaries from $1320 to $1680	1560

Some additional examples on this point are found in the cross-examination of Mr. Conroy (R. 324-346).

He was asked if he could "find a single white teacher in that tabulation (Plaintiffs' Exhibit 1) *who did not receive the grade of or rating of Good at three years of service"* and *the witness named nine such white teachers* (R. 343-344).

He was then asked:

"Now referring still to the same exhibit, *can you name me any colored teachers who received the classifications of*

Good before they were seven years in the service"? The question was later amended to include those in service for seven years or being in service eight years. *The witness gave the names of eleven such teachers that varied in length of service from two to seven years* (R. 344-346).

So it is apparent that the salaries paid under the schedule of November 26, 1941 as amended did not, as claimed by the petitioners, follow the years of service and that there are many variations from that pattern.

It is true that the result of the rating process is that a large part of the white teachers are rated Good or Very Good and a large part of the colored teachers are rated Fair or Good (some white being rated Fair and Very Good and some negroes being also rated Very Good). The only testimony as to why this result was obtained is to the effect that the rating process was fairly and uniformly applied to all teachers, without regard to race or color (R. 165-167, 228, 287).

There are other facts in the record that throw considerable light on why the white teachers *as a group* received higher rating than colored teachers *as a group*:

(1) The white teachers had for years been highly selected while this was not true of the colored teachers. There has been and is a great over-supply of well trained white teachers available in Miami and for this reason only the best white teachers have been retained in the system (R. 151, 208, 210 and 305).

(2) There has been and is a great shortage of well trained colored teachers. This condition is accounted for as follows: (a) The colleges do not train a sufficient number of colored teachers and (b) most colored teachers do not re-

ceive as good training in college as do the white teachers (R. 153, 209, 308, 309).

(3) The white principals demand a much higher standard of efficiency of their teachers than that demanded by the colored principals (R. 210).

(4) In actual teaching from day to day the record shows that white teachers:

(a) are more dependable than colored teachers

(b) accept responsibility more readily than colored teachers

(c) maintain better discipline, make better reports, give better protection to school property, make better use of related educational material and outside reading than colored teachers

(d) exhibit a greater interest and desire in becoming and being good teachers than colored teachers

(e) Have greater general knowledge and better organizing ability in class room than colored teachers (R. 168, 211, 308).

(5) In the fall of 1942, tests were given to beginning teachers, both white and colored. The teachers taking the tests were college graduates, held certificates from the State and the tests were given to both groups, under the same conditions. The test cited below was on "How I teach—an analysis of teaching processes and these are objective tests and they are graded in what we call a purely objective manner":

	Teachers taking the test and the results	
	White	Colored
In First Quartile	11	1
In Second Quartile	11	1
In Third Quartile	10	2
In Fourth Quartile	1	10
Total	33	14

In October, 1942, the same test was given to eleven white and three colored teachers with the result that the three lowest grades were made by the colored teachers. The white teachers graded 60 per cent and the colored teachers graded 41 per cent (R. 137-139). Dr. Pearson testified that from time to time he gave tests to colored teachers, at their request, and about the results of these tests he said: "* * invariably I find that the difference in scholarship is quite astounding between the white teachers and colored teachers".

The results of tests given the pupils of teachers may not of themselves be conclusive proof of the value of the teachers, yet they are indicative of the quality of the work of the teachers and when taken with other and stronger proof will certainly be worthy of consideration in determining the relative worth of the two groups of teachers. In April, 1942, Dr. Pearson gave College Placement test to all seniors in the high schools in Dade County. The test was prepared by the University of Florida at Gainesville for the purpose of checking on the ability of the seniors to do college work. He gave them to the colored seniors "in an effort to try to develop scholarship in that school as well as the white school". The giving of the test was supervised by the principals of the schools and then collected and delivered to Dr. Pearson who shipped them to the University of Florida and where they

were graded by a machine. The persons taking the tests were ranked from 100 down to one. The results of the test given in the following high schools of Dade County were:

"White high schools:

Andrew Jackson High	43
Homestead	30
Miami Beach High	66
Miami Edison High	43
Miami Senior High	55
Ponce de Leon High	55
Redland High	40

Colored high schools:

Booker T. Washington	14
Coconut Grove High	8
Dorsey High	8 (R. 141)"

Dr. Pearson, in commenting on the great difference between the white and colored seniors said:

> "I have given these college placement tests to the colored and white seniors consistently for the past three years and I find a very great discrepancy between the white seniors and colored seniors, so much so that it is rather astounding that there should be so much difference in high school graduates" (R. 140).

He also gave an English test to the high school seniors with similar results, to-wit:

White high schools:

Andrew Jackson High	46
Homestead High	34
Miami Beach High	56

White high schools:

Miami Edison High	56
Miami Senior High	50
Ponce de Leon High	58
Redland High	57

Colored high schools:

Booker T. Washington	19
Coconut Grove High	8
Dorsey High	7 (R. 142)

The same general results appeared from a test given these seniors in social science.

The results of the foregoing tests taken by both teachers and their pupils certainly sustain the result of the ratings and the uncontradicted testimony of the witnesses of the defendants that the white teachers *as a group* have greater teacher worth than colored teachers *as a group.*

The rating process was designed and intended to measure the teacher worth of the individual teacher. The undisputed evidence is that the salary schedule is a professionally sound and fair instrument for the accomplishment of this purpose and that the rating committee fairly and uniformly applied the rating process to all teachers and principals without regard to race and color. The rating committee *rated teachers* and not "white teachers" and "colored teachers" (R. 165-167, 228, 287). That the white and colored teachers may hold the same type of certificates issued by the State and that they have the same years of service does not mean that they have the same teacher worth (R. 154). Yet in effect the petitioner bases his entire claim of discrimination on the fact that white teachers *as a group* are paid higher salaries than colored teachers *as a group* when the personnel of both

groups have the same teacher certificates issued by the State and the same years of service. Petitioner would completely ignore the teacher worth of the individual teacher. In fact petitioner seeks equal pay for unequal service.

We submit that the petitioner has failed to show any unlawful discrimination against himself or against the group he represents. We conclude with the following quotation from the opinion of the Circuit Court of Appeal:

> "Where all rating is on an individual basis, it is impossible that there should be a class discrimination except against individuals of the class. No case of individual unfairness has been revealed by an appeal and no witness has testified to any, though unintended errors are admitted".

OCT 1 1945
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 296

HUBERT C. REYNOLDS, suing on behalf of of himself and others having common rights and interests,

Petitioner,

v.

BOARD OF PUBLIC INSTRUCTION FOR THE COUNTY OF DADE, STATE OF FLORIDA, and JAMES T. WILSON,

Respondents.

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONER

In petitioner's original brief in support of petition for certiorari we believe that the position of the petitioner, and those in behalf of whom he sues has been well stated, possibly necessitating no reply to the brief of the respondents. However, we feel that this particular case is the most important on the question of racial discrimination of any which has reached the Supreme Court of the United States in recent years and, because of that belief we would rather err on the side of excess zeal than on the side of lack of diligence.

There have been, in the lower courts, other cases of this type but which have not reached the Supreme Court after the cases have been completed by the taking of testimony. In no case involving racial discrimination would it be possible for the negro to show discrimination in any way other than by the works and

deeds of the School Board and its employees. We were convinced, that in this part of the country at least, the defendant School Boards would attempt to show lack of discrimination by generalities and asservations of complete sympathy for the negro and his problem and a total lack of intention to discriminate against him. We became convinced that the claims of the School Board would be, as it has been in other cases, that their Boards and employees were all highly educated, skillful and experienced educators; and that in the progress of each step of their work they were governed by the desire of and intention to rate, classify and pay whites and blacks according to their merits.

We knew, and still know, that in this part of the country at least that it would be impossible for the negro or his counsel to show either that the qualifications claimed were not possessed or the fact that an intention and desire to discriminate was present in the minds of the Board or its employees.

Obviously, it is impossible to show the presence of discrimination in the mind of a human. Actually, the petitioner would have no cause to complain if the mental and educational qualifications of the Board and its employees were below par. We have never claimed, and do not now claim that the Board and its employees were unfitted or unqualified for their positions and work because of lack of education, experience or the like. We have claimed, and do claim, that they were unqualified and unfitted for their position by reason of their expressed belief in the inferiority of the negro, as shown in the testimony of each of respondents' witnesses and, indeed, insisted upon by them.

The claim of petitioner, of course, is that the respondents violated the Constitution of the United States of America by adopting and pursuing the custom, policy and usage of paying the negroes less salaries than they pay the whites, solely because of the

color question. Obviously, in order to show "custom, policy and usage" it was necessary to show that over a given period of time—in this case from December 11, 1940 down to the schedule in operation at the time the case was tried—that the acts of the respondents were discriminatory and solely because of color. Therefore, the schedule of December 11, 1940 commonly referred to as the "color schedule" was introduced in evidence and the tabulation of compilation which is Petitioner's Exhibit of December 6, 1943, the official list, was introduced, for the purpose of showing that the discriminatory treatment complained of was in fact one of "custom, policy and usage."

We have said, and say again, that the importance of this case lies in the fact that it always will be impossible for the negro to show discrimination except by the works, actions and desires — and the result thereof—of respondents such as these. If by virtue of sheer numbers of witnesses and general assertions by them that they are qualified, that they did the work without discrimination and that the sole object was to bring about a fair result this type of case is to be decided then, indeed, as far as the negro is concerned the Fourteenth Amendment to the Constitution of the United States might just as well be non-existent.

At the risk of repetition, we say that it was impossible at the time of the trial and it is impossible now for the petitioner to challenge the qualifications and experience of respondent and respondent's witnesses—or to challenge what might have been in their minds other than by showing the symmetrically and monotonously similar results obtained by them under the unconstitutional color schedule and throughout all of their subsequent claimed efforts. The fact still remains that whenever and wherever it is possible to show that things were not as they were said by respondent to be—that whenever it is possible to prove or disprove, the accuracy of statements by them—the proof shows that they were either inaccurate or deceptive.

THE PROOF

Let us look at the proof:

On pages 21 and 22 of their brief, respondents say that Appendix II is of no value for the reason that it was impossible to place the schedule into effect as to white teachers during that school year in cases where it would result in reducing salaries. We have only to look at the official list itself to see that all white teachers were rated according to their years of service which did not call for any reduction of salaries. That is for 1941-1942 school year. If we turn to the column of salaries for the year 1942-1943 schedule we find that all the white teachers advanced automatically without reduction.

On page 22 of their brief respondents criticize Appendix III, stating that it does not give the correct amount of salary received by each teacher and that except as to a few teachers, no reference is made to the ratings. The fact of the matter is that the salaries given are base salaries as explained, without increments allowed for master degree or for special services which are not permanent. Any other system would make comparison impossible. All the white teachers in each year of service received the same salary as shown by Appendix III—we purposely omitted the classification because it meant nothing to the teacher.

On page 243 of the Record, Mr. Wilson, the Superintendent, testified:

"So we just took the two salary schedules and set them up."

The two salary schedules referred to were those of the unconstitional "color schedule" and the white schedule. Then (R. 244) the Superintendent said:

"We did not rate them on the salary schedule, whatever classification they fell into then."

To us, there is but one meaning to this statement and that is that the respondents did not intend to pay the colored teachers at any higher salaries than had been paid to them under the former unconstitutional "color schedule" where the minimum for blacks was $724.00 and for whites was $1,020.00, and which rate of pay all of the witnesses have insisted was fair pay.

Turning to Appendix II of our brief it will be seen that the colored teachers in 1942-1943-1944 were carried along on the same basis. Of course, there are a few exceptions where colored teachers received increases in some years of service while *every white teacher* in *any* year of service had the identical salary for that year as previously. The answer to this is given by the Superintendent himself (R. 253) under cross-examination:

Q. After the adoption of the April 29, 1942 schedule your committee rated all of the teachers, as I understand it, both white and colored?
A. That is right.

Q. And it was not found necessary, was it to change any of the ratings of the white teachers at that time?

A. I don't remember the exact ratings of individual teachers there. *I just recall we rated them as a group.* (Emphasis supplied.)

In his testimony (R. 312) Mr. Conroy, in order to prove that white teachers of the same year of service were rated differently, cited the 6-year white teachers of whom he said 13 were rated Good and 9 Very Good. This he claimed showed how teachers of the same number of pears of experience fell into two different classifications. In respondents' brief much is made of this, counsel for respondents (App. p. 12) saying,

> The above group of teachers with rating of Good actually receive $1,260.00 per year, that being the maximum payable under the rating

of Good, and the above group of teachers with a rating of Very Good actually received $1,800 per year, that being the maximum payable in their classification, but if appellants' contention be correct, then both groups necessarily would have received $1,260 per year."

Here counsel is mistaken because both groups actually received $1,260.00, and all—both those who had been rated Good and Very Good with the same salary of $1,260.00, were in the following year, 1942-43, rated Very Good, with the salary of $1,320.00, which applied to the classification Very Good as seen by the schedule. (R. 33).

That there be no question about this we hereunder give a complete list of the 6-year teachers of 1941-42, with their salaries and ratings for both that and the succeeding year, with the page of the official list on which their names and all the information is given by the respondents. It clearly appears that however the different ratings got on the official list, the salaries of the teachers were not affected.

Official List Page		1941-42 Salary	Rating	1942-43 Salary	Rating
2	Wilma Barnhill	$1,260	G	$1,320	VG
3	Jane Martin	1,260	G	1,320	VG
3	Mary McCracken	1,260	G	1,320	VG
5	Lucille Coppock	1,260	G	1,320	VG
15	Annie Le Rollins	1,260	G	1,320	VG
19	Fred Lugenbuhl	1,260	G	Leave	
10	Martha Lewis	1,260	G	1,320	VG
24	Clairnelle Weber	1,260	G	Resigned	
25	Maxine Songer	1,260	G	1,320	VG
33	Betty McCall	1,260	G	1,320	VG
35	Clarice Parker	1,260	G	1,320	VG
37	Martha Zimmerman	1,260	G	1,320	VG
37	Katherine Singleton	1,260	G	1,320	VG
25	Janice Brill	1,260	VG	1,320	VG
27	Marion Ryan	1,260	VG	1,320	VG

28 Louise Ott	1,260	VG	1,320	VG
28 Helen Lundilius	1,260	VG	1,320	VG
29 Irene Peoples	1,260	VG	1,320	VG
30 Ruth A Murray	1,260	VG	1,320	VG
32 Hilda Weir	1,260	VG	1,320	VG
32 June Randolph	1,260	VG	Resigned	
33 Nora McKinney	1,260	VG	1,320	VG
38 Ray Miller	1,260	VG	1,320	VG

From this it will be seen that every one of the 13 rated Good in 1941-42 except one who resigned and one who took leave, was automatically advanced to the Very Good Salary of $1,320.00. And all of those who were rated Very Good were continued at the same salary as the others; that is, all the 6-year white teachers of 1941-42 were at the same salary in 1942-43, classification or no classification notwithstanding.

At the beginning of his cross examination (R. 342) Mr. Conroy who had been testifying not only as a member of the rating committee but also as an expert statistician was shown the official list and asked if there was a single white teacher who did not receive the grade of G at 3 years of service. (The contention of the petitioner has been that the white teachers uniformly reached the grade of G after having been in service 3 years while the colored teachers reached it only after 8 years). He answered:

A. May I refer to my notes?

Q. Yes.
A. All right.

Q. I am speaking now of the teachers who were in the school system at that time.
A. At what time?

Q. Any where on the tabulation—four years?
A. Four years?

Q. That did not reach the grade of Good at four years?
A. I will look and see if I can find such a figure (Witness examined papers). Yes, the name of

Edna Luke appears on here who does not follow that.

Q. Spell the name.
A. E-D-N-A L-U-K-E.

Q. What was her rating?
A. Fair.

Q. At what years of service?
A. Twenty-five.

Q. A degree teacher?
A. Yes, only degree teachers receive that rating.

Q. Can you find me another one?
A. I will look and see, sir.

Q. Do you find —
A. I find no others who receive that rating. There were others who had been rated Fair who do not appear on the compilation, however, who left the school system or who failed to receive a recommendation for re-employment after receiving that rating Fair. (R. 342-3).

This shows conclusively that Mr. Conroy knew exactly what Mr. Semple was questioning about, namely, teachers in the system previously. There is no possible excuse for this testimony of Mr. Conroy. It was false and known to Mr. Conroy because he made certain as to what was wanted by his question.

The fact of the matter is that Edna Luke was not in the school system in 1941-42, having been employed for the first time in 1942-43, as is shown in page 43 of the official list. This testimony regarding Edna Luke was therefore incorrect. Later, Mr. Conroy testified as to others of from 4 to 22 years' experience who he said were "rated only fair," (R. 343-344) as follows:

He testified that Walter Blackwell, a 4 year white teacher was "rated only fair." Mr. Blackwell was rated "Good." (Official list, page 341).

He testified that June Randolph, a 6 year white teacher was "rated only Fair" (R. 343). She was rated "Very Good." (Official List, p. 32).

He testified that Thelma Fulton, a 5 year white teacher was "rated only Fair." (R. 343). Thelma Fulton was rated "Good." (Official list, p. 39).

He testified that Helen Bixler, a 5 year white teacher was "rated only Fair." (R. 343). Helen Bixler was rated *"Good."* (Official list p. 18.)

He testified that Eleanor Mebane, an 18 year white teacher, was rated "Fair." As a matter of fact she was a 22 year teacher and rated *"Very Good."* (Official list p. 8.)

He testified that Annie P. Lee, a 17 year teacher was rated only "Fair." (R. 344). She was rated *"Very Good."* (Official list p. 10.)

The significance of this, and the other items specifiaclly pointed out here, is that it is only in connection with this type of answer that the petitioner would be able to show if the truth were being told or if the statements of the witnesses were accurate. And we say, without any hesitation or apology to counsel for respondents that in practically every instance of this kind where the answer can be checked for accuracy and veracity, the check shows against the respondents.

On page 325 of the Record—speaking of Barnhill and Abertine Fleming whom he had said were 15 years of experience, he was asked:

Q. Were they new teachers?

A. No sir, they weren't new teachers. Last year they had been with us over a period of anywhere from—some came in last year and some had been with us previously for a very few years—two or three.

Both of the teachers named, and named so emphatically by him, were employed for the first time in

1942-43, given temporary rating of Good with a salary of $1,260, the limit of that rating—and advanced to Very Good, maximum salary of $1,800.00 in 1943-44. Fleming had outside service of 18 years and Barnhill outside service of 22 years. Not 15 years as Mr. Conroy testified. Both names are found as new teachers on page 42 of the official list.

At page 326 on direct examination Mr. Conroy made the following statement:

> "Here are a number of names I pulled out from the compilation of degree teachers who did not receive any salary increases for the years 1942-43 because of having reached the maximum payable to them under their rating, whatever it might have been, with the exception of those who had the maximum of $1,800.000. I did not consider any of those because that is the maximum."
>
> Then he proceeded to name the following: Edna Luke (List p. 43), Virginia Rogers (List p. 41), Willie Kernochan (List p. 41), Mary Morrison (List p. 42), Grace Stone (List p. 41), and Elizabeth Carnes (List p. 44).

All of these were employed for the first time in 1942-43 except Elizabeth Carnes who had been a substitute teacher not mentioned in the list of teachers but put in employment first time in 1942-43. (List p. 44). He also named Estella Jones, a colored teacher who was not advanced in 1942-43 because of having reached the maximum. Estella, like the whites just named, was employed for the first time in 1942-43. (List p. 60).

> Then Mr. Conroy said:
>
> "Here are two white teachers in the 8th year that illustrate that difference. One is receiving $1,320 and one is receiving $1,260. Now neither of those teachers has been rated Very Good *for very long* or their salary would be more."
> Then by Mr. Keen:

Q. The names?

A. A. E. Blair and L. Liddy. Blair received $1,320 and Liddy received $1,260. I don't recall off hand what the eighth year salary is for a teacher who makes normal progress and improvement year by year and is reclassified as a normally progressive teacher will be from Fair to Good and to Very Good as she improves in the service. It is $1,500, I would say, and $60 one way or the other. So neither one of those teachers, you can see is in that bracket. One is rated only Good and receives $1,260, while the other has just been rated Very Good and receives $1,320."

Examination of the official list shows that Blair was employed for the first time in 1942-43 with a temporary rating of Good and advanced in 1943-44 (List p. 41) and Liddy was appointed in 1943-44 with the same rating. (List p. 47).

THE ADDITIONAL DEFENSES

The respondents in their brief continue to appear to misunderstand our point with reference to the so-called "Additional Defenses." (R. 42-51). The Courts below, we insist, also missed the same point. Our entire claim is that the record shows, conclusively, that regardless of what the defendants and their witnesses *may say,* no matter the asservations and repetitious claims of non-discrimination and *lack of intention,* their "Additional Defenses" stand as an unshaken and immovable monument upon which appear the words "the whites pay more for their education than do the blacks; the whites pay more, and must pay more, to live than do the blacks; the whites pay more, and must pay more to maintain "position" than do the blacks; it is necessary that the whites maintain a higher and better position than the blacks. Therefore, we pay and we intend to pay—under all circumstances—more to the whites than we will pay to the blacks." With that belief in their

minds, and they by their "Additional Defenses" formally so stated, we say that it was impossible for them to perform the task of classifying and rating without discrimination. To put it another way: these statements contained in the "Additional Defenses," taken in conjunction with the monotonous regularity of results in pay—all to the disadvantage of petitioners—are irrefutable proof of discrimination and intention to discriminate.

We appreciate the fact that respondents would like to disavow the implications and the intention to discriminate as evidenced by these, now, confounding "Additional Defenses," but we insist, the statements are theirs. They show what lay in their minds and hearts and in their souls, and they are "stuck" with them, inescapably.

We insist that the Courts below were asleep—that their abilities to interpret human actions based upon declared motives were lacking—when they failed to recognize that such expressed motivations to discriminate must have dominated every act of the respondents.

One of the chief reliances of respondents is that *"negro teachers as a group"* had less teacher worth and were less efficient teachers than the white teachers *as a group."* (Respondent's Brief p. 16). This was stated to be a fact by all of respondents' witnesses. Actually it was *insisted* upon by them. We ask: less efficient and effective for whom? For blacks teaching whites? For whites teaching blacks as far as the whites were concerned and vice versa?

We submit that the petition should be granted.

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